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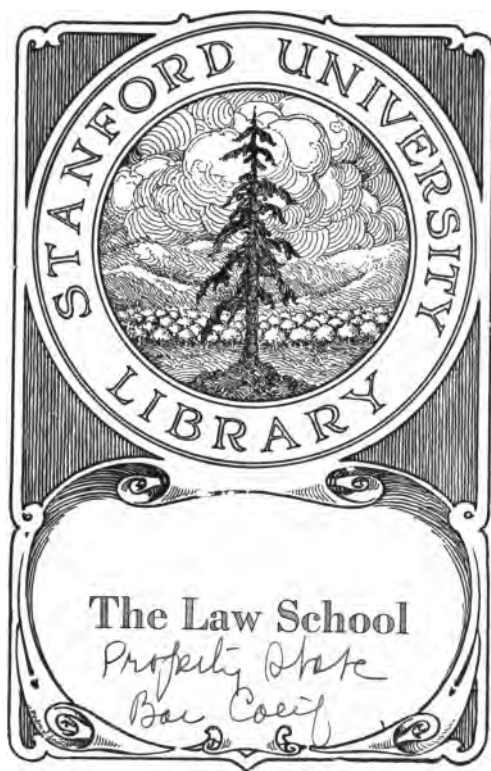
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P. E. L. Sauer
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Texas Bar Association

PROCEEDINGS OF THE

THIRTIETH ANNUAL SESSION

HELD AT

Waco, July 4 and 5, 1911

AND

Constitution and By-Laws of the Association

List of Members, Officers and Committees

1911

These Proceedings are published by authority and distributed to members of the Association.—J. B. Cave, Secretary.

The Thirty-First Annual Session of the Texas Bar Association will be held in the city of Galveston

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1912



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PROCEEDINGS
OF THE
THIRTIETH ANNUAL SESSION
OF THE
TEXAS BAR ASSOCIATION
HELD AT
WACO, JULY 4 and 5, 1911

JULY 4, 1911—MORNING SESSION.

The Texas Bar Association met in its thirtieth annual session in the City of Waco on July 4, 1911, and was called to order at 10 o'clock a. m., by Hon. Hiram Glass of Austin, President of the Association.

THE PRESIDENT: Gentlemen of the Association: You will please come to order. I know you will be pleased to have me introduce a member of the bar and a citizen of Waco, who will deliver the address of welcome. I introduce to you Hon. T. L. McCullough, County Judge of McLennan county. (Applause.)

ADDRESS OF WELCOME.

BY HON. T. L. M'CULLOUGH.

Mr. Chairman and Gentlemen of the Texas Bar Association: It is, indeed, an unmerited honor to me to have the privilege of saying words of welcome for the Waco bar and the citizens of Waco to the Texas Bar Association, and it is an honor which came to me about as suddenly as the usual call is made for the midwife in the middle of the night before. (Laughter.) Mr. Sanford very kindly notified me yesterday evening, while I was in the midst of trials and tribulations in the County Court, that

I must say something to you as a word of formal welcome. I believe for the first time in the history of our city we have the honor of entertaining your Association. I hope none of you will say when this meeting is over that we shall never have it again, for it is a distinguished honor to have within our gates the representatives of a profession which has done so much for this great State of ours. We are proud of the record that has been made by some members of the Waco bar, and we feel that some of our own distinguished lawyers have helped to build the inspiring history of the jurisprudence of Texas, and we point with pride to the part the Waco bar has had in it. No State can more worthily boast of what has been accomplished by the profession than the State of Texas. We were fortunate in our early days in having educated judges in our courts, and in the framing of our Constitution, and in the construction of our laws we had an advantage in the beginning that the older States could not have. I am glad to remind you that Waco has had the honor of representation in our highest courts, and I refer to Judge, afterwards Senator, Coke, Judge Clark and Judge Prendergast, who now sits upon the Court of Criminal Appeals. The Waco bar takes pride in the record these men have made. It is with special pride that we welcome the members of the bar who are here today; the judges of the great Supreme Court, the Court of Criminal Appeals and the Courts of Civil Appeals; our beloved professors of the University, who are gracing this occasion with their presence, so much to the delight of all, and especially of the young members who have gone out from that University. But being lawyers and professional men, you do not care anything about frills and bouquets that we might throw. We are going in for two days of real pleasure, and our lawyers will be with you, and they are going to see that you have a good time. We have here a splendid supply of water. I do not know that that interests you much, because we do not expect you to drink much water while you are in Waco (laughter), but some of our friends in sister cities are disposed to poke a little fun at us about trying to be a city, and we want you to know about our resources. But I shall not weary you with any remarks about

them, because you will be in the hands of Waco citizens who will show them to you.

We trust your stay here will be an inspiration to our own bar. We trust your meetings will be interesting and profitable. We wish to take you out to see our suburbs and our beautiful homes, and we shall open to you all our public institutions, our homes and our hearts. We McLennan county men think we have the empire county of the State, and I will call your attention to a little incident that entitles us to that distinction. A few years ago, at the Paris Exposition in France, when there were collected in competition soils from all the countries of the globe, the scientists said, after comparing all the soils, that they found that the soil from the Brazos valley, in McLennan county, Texas, was the richest sample of soil produced, though they had soil from the Mississippi, from the Missouri, from the Ganges, from the Danube, from the Nile itself. They said that there came from McLennan county the richest soil of any place upon the face of the earth. It has been my privilege to traverse this county from one end to the other, and I have been in every little school-house and among all the people, and this county is not only broad enough and big enough to be an empire in itself, but it has a people big enough, brave enough, brainy enough and strong enough to defend an empire. If any of you have ever undertaken to cover a territory of like consequence you might agree with me that within the limits of a county like this there might be an empire equal to Carthage or Rome itself.

We are truly glad to have you here. We want your stay to be pleasant, and we hope you will all go to your homes, after your two days of sojourning here, glad that you have been here. (Applause.)

THE PRESIDENT: On behalf of our Association we will now listen to the response to the address of welcome, by Hon. Clarence Wharton of Houston. (Applause.)

RESPONSE TO ADDRESS OF WELCOME.

BY HON. CLARENCE WHARTON.

Mr. President and Members of the Bar Association: I won't tell you this is an unexpected honor. When you hear my address you will know it has been well prepared, and I can not put it off on you for an extempore speech. Like most lawyers, I have been busy, hard at work, for ten or fifteen years and have not had any vacation, and the great mental strain that follows years of unremitting labor has told upon me. So I planned to have a little vacation, to go off somewhere. I consulted with my wife about it, as to the place where I would probably get the most complete mental rest, where I would be required to do the least thinking for awhile, and she, being a lawyer's wife, a lawyer's daughter, a lawyer's sister and sister-in-law to another lawyer and the mother of a probable lawyer, suggested that the completest realm of mental inactivity and rest I could find for a few days would be at the meeting of the State Bar Association. (Laughter.) So I came here hoping to enjoy complete mental rest, while we discussed problems of court procedure and reform measures and nine juror bills, and such things as that, and I am drafted and put to the extreme mental effort of responding to that classic Fourth of July oration that we have just heard. (Laughter.)

I had heard of Waco ever since I was a little boy. You know Houston was once the capital of Texas, and my people before me, all the generations preceding me, were sent up here to fight the Waco Indians. Most of our people do not know that the Indians are not here yet. So I will go back to them with a report that since our fathers and grandfathers came up here to fight the Wacos a great empire, superior to Carthage and grander than Rome, has been founded on this magnificent soil. (Applause and laughter.) But I came up here, not to fight Indians, but, as I said, to get a complete mental rest.

On landing here this morning, much to my edification, I found that even your tradespeople have decked their houses with the flag today in honor of our coming. (Laughter.) True, it is the Fourth of July, but I won't spoil the beautiful idea by suggesting that you think for one moment of a nation's birthday

when you have in your midst, as my friend who has just preceded me has suggested, the grandest body of men that ever ruled the world. Did you ever notice, when a body of men of any craft or cult get together, how easy it is to pass resolutions as to their own greatness! You have heard the story of the three tailors who got together in London on one occasion and scared the flies out of the shop and passed some grandiloquent resolutions, "We, the citizens of London——." So it is whenever two or three lawyers, or two or three preachers, or two or three doctors get together. It is confidently told in their midst that they are the greatest people and the mightiest men that ever adorned the earth. I have attended doctors' meetings, and learned from them first handed, that they were the greatest men that ever enlightened the world; that if it were not for them, life would become extinct. I have gone to school teachers' gatherings, and I have heard how they take the little children and bring them up in the way they should go, and that they, consequently, are the greatest people on the earth; the same distinction has been claimed by the plumbers, bricklayers, undertakers and bakers. If I did not know that this distinction belonged to the lawyers, I might sometimes think there was some question about it. But I am reassured this morning, when I hear your distinguished citizen say that these lawyers that have gathered here are the greatest people in the world; that they rule the world; they rule its business affairs, its commercial affairs and its legal affairs. So we will accept this fact without further discussion, and in our deliberations on court procedure and nine juror bills, let us not turn aside for one moment to discuss this question, for we understand that we are the greatest people that ever lived, the most remarkable aggregation of citizenship beneath the sun, the salt of the earth and pearls of great price.

Now, my friends, as I said, I came up here for a mental rest and I am in that attitude now. An address of welcome is purely a formal matter, you know. You are all welcome if you will behave yourselves and pay your hotel bills—that is what I propose to do and what I hope all of you intended to do when you came up here. I hope you will all pay your hotel bills and be-

have yourselves and avoid friction with the police, and you will be entirely welcome. (Laughter and applause.)

THE PRESIDENT: The report of the Board of Directors is next in order.

The report of the Board of Directors was read by Mr. R. E. L. Saner as follows:

We, your Board of Directors, recommend the following program for the present meeting of the Association:

TUESDAY, JULY 4,

Address of welcome, T. L. McCullough, Waco.

Response, Clarence Wharton, Houston.

Report of Board of Directors.

Address of President, Hon. Hiram Glass, Texarkana.

Report of Secretary, J. B. Cave, Austin.

Report of Treasurer, W. D. Williams, Austin.

Nomination and election of members.

Address, "Judicial Reform in Texas," Judge William Hodges, Texarkana.

Report of Committee on Jurisprudence and Law Reform, George C. Greer, Chairman, Beaumont.

Report of Committee on Judicial Administration and Remedial Procedure, A. E. Wilkinson, Chairman, Austin.

Paper, "A Sketch of John Marshall," Ben G. Kendall, Waco.

Report of Committee on Legal Education and Admission to the Bar, John C. Townes, Chairman, Austin.

Report of Committee on Commercial Law, Hayden W. Head, Chairman, Sherman.

Report of Committee on Criminal Law, Rudolph Kleberg, Chairman.

WEDNESDAY, JULY 5, 9 A. M.

Nomination and election of members.

Report of Committee on Grievances and Discipline, Thomas H. Franklin, Chairman, San Antonio.

Report of Committee on Deceased Members, Jewell P. Lightfoot, Chairman, Austin.

Report of delegates to American Bar Association meeting at Chattanooga.

Annual Address, "Structural and Economic Changes," Hon. Martin W. Littleton of New York.

Paper, "Some Results of Holding the Legal Intellect in Mortmain," Col. H. N. Atkinson, Houston.

Report of special committee to increase salaries of judges.

Miscellaneous and unfinished business.

Election of officers.

Election of directors.

Election of delegates to American Bar Association.

Banquet at Huaco Club at 8:30 p. m.

Respectfully submitted,

R. E. L. SANER, Acting Chairman;

ALLAN D. SANFORD,

W. T. BARTHOLOMEW,

MARSHALL SPOONTS,

Board of Directors.

MR. SANER: I move that we follow the order of business as decided upon by the Board of Directors.

The motion was seconded and unanimously adopted.

THE PRESIDENT: I believe the next thing is that you shall be afflicted with the president's address, and you will pardon me for reading it.

(The address which Mr. Glass delivered before the Association will be found in the Appendix.)

THE PRESIDENT: The next order of business is the report of the Secretary.

THE SECRETARY: I suggest we pass the report.

THE PRESIDENT: We will pass the Secretary's report for the present. Next is the report of the Treasurer.

THE TREASURER: Owing to the fact that the report has not yet been passed upon by the Board of Directors, I am compelled to ask that that be deferred until some future time during the session.

THE PRESIDENT: No objection being made, the hearing of that report will be deferred for the present. The next order of business is the nomination and election of members.

MR. SANER: I move that that be passed also for the present.

THE PRESIDENT: Is there any objection to that being passed? If not, it will be passed for the present. The next on the regular order of business is an address by Hon. William Hodges of Arkansas.

(The address delivered by Judge William Hodges will be found in the Appendix.)

THE PRESIDENT: The paper of Judge Hodges is before the Association for discussion, if any one wishes to discuss it. If there is no discussion of the paper we will pass to the next paper. The next order of business is the report of the Committee on Jurisprudence and Law Reform. Judge George C. Greer of Beaumont is chairman of that committee.

MR. YANCEY LEWIS: Mr. President and Gentlemen—I think the paper just read by Mr. Hodges is a very important and a very suggestive one. I do not personally care to discuss it at this time, but I do not think the Association ought to permit it to go by without consideration. I am aware that I may depart from the order of business somewhat by making the motion, but if it is not objected to I will move that the further consideration of that paper be postponed until the afternoon session, in the hope that it may provoke further discussion of the questions of great importance presented, and the more careful consideration of the suggestions that it is entitled to, which is the highest consideration of this body.

The motion was seconded.

MR. WHARTON: I think the report of the next committee, as I understand it, will bring out a discussion of these same questions, and there is no use of discussing it twice. When we hear the report of that committee we can discuss it with the paper that has just been read, rather than to have a discussion of this paper and then of the report of the committee also.

MR. LEWIS: Then, if my second will agree, I will modify my motion so as to suggest that the further consideration of that paper be resumed in connection with the report mentioned by Mr. Wharton at the afternoon session.

The second agreed and the motion as modified was unanimously adopted.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

Mr. President and Members of the Texas Bar Association:

The duties of this committee as stated in the By-Laws of the Association are "to consider and report to the Association such amend-

ments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same."

The privilege thus given to suggest amendments to the law brings the committee face to face with the same temptation that confronts a new member of the Legislature—to experiment with new laws or make some change in existing law.

While recognizing the necessity and wisdom of changing and adapting, within proper limits, the laws to meet new conditions, whether arising from the growth of the State or otherwise, still your committee, realizing how much the country at large, not excepting our own State, has already suffered from ill-advised and poorly digested legislation, will endeavor not to drift into the prevalent habit of suggesting numerous changes of doubtful wisdom and necessity, preferring no change at all rather than one of doubtful value, and mindful of the safe rule which we commend to future Legislatures, laid down by Mr. Lincoln as follows:

"I do not mean to say we are bound to follow implicitly in whatever our fathers did. To do so would be to discard all the lights of current experience—to reject all progress, all improvement. What I do say is that if we would supplant the opinions and policy of our fathers in any case, we should do so upon evidence *so conclusive* and argument *so clear* that even their great authority fairly considered and weighed can not stand."

We do not believe that the suggestions made below will, however, violate this wise rule of conduct.

THE COURTS.

This State has been fortunate in the past in maintaining almost throughout its history a Supreme Court justly respected and commended for the high character, patriotism and ability of its judges. The necessity of continuing this condition never seemed greater than now, when thoughtful and patriotic citizens are forced to turn their eyes and hopes from the reckless assaults constantly occurring in the arena of political agitation and legislative action, to the judge as the one upon whom we must now chiefly rely for the preservation of our institutions and the perpetuation of the government inherited from our fathers under which we have prospered and grown great.

Any thoughtful person must see clearly that the present compensation of the appellate judges when compared with the high cost of living (increased two-fold since the present compensation was fixed), and the enlarged opportunity to earn much more in private practice, is a serious menace to the preservation of the high character and efficiency of those courts. Furthermore, experience teaches us that large courts afford a better guarantee than do small courts of thoroughness of investigation and soundness of decision, which are so

much needed to prevent litigation, and, therefore, for the economical administration of justice.

At the same time the rapidly growing volume of litigation, due to the expansion of the State in wealth, business enterprises and population, and the increased burdens thus imposed on our Supreme Court, render it a present and imperative necessity to enlarge that court for the purpose of disposing of the work with reasonable promptness, even if no other consideration prompted us to such action.

Believing that no thoughtful citizen, having the welfare of his State at heart, would knowingly permit a condition that threatens so much evil as the present status of the law on the subject, we take this opportunity to recommend that this Association press and urge upon the Legislature and the people of the State the following changes in the law, which we think will greatly guard us against the immeasurable calamity that would result from the deterioration either in ability or greatness of character of the judges of the appellate courts of the State:

(1) To the end that lawyers of great ability, high character and large experience may in the future, as in the past, be obtained for the supreme bench of this State, we recommend that the salaries of each of the judges of the Supreme Court be increased by the Legislature to seven thousand five hundred (\$7,500.00) dollars per annum. We also recommend that a like salary be fixed for each of the judges of the Court of Criminal Appeals.

(2) We recommend that the salaries of the several judges of the Courts of Civil Appeals be increased by the Legislature to six thousand (\$6,000.00) dollars per annum.

(3) We further recommend that an amendment to the Constitution of the State increasing the number of judges of the Supreme Court from three (3) to five (5) be submitted by the Legislature to the people for adoption.

The necessity of making the increases in salary here recommended must be apparent to any one upon the slightest reflection.

The Constitution of 1876 limited the compensation of the Supreme Judges and the judges of the Court of Appeals to three thousand five hundred and fifty (\$3,550.00) dollars each per annum (Sec. 1 and 5, Art. V); the amendment adopted in 1891 provided for "an annual salary of four thousand (\$4,000.00) dollars *until otherwise provided by law.*" So the salary of these judges has been since 1876 the same with the trifling increase of four hundred and fifty (\$450.00) dollars per annum made under the amendment adopted in 1891.

The population of the State has multiplied more than three-fold, increasing from approximately 1,225,000 in 1876 to 3,896,542 people in 1910. Our wealth, as indicated by the taxable values, has grown even much faster, being \$248,415,855.00 in 1876 as against \$2,388,500,124.00 in 1910—thus multiplying ten times.

The cost of living has kept pace with our growth in wealth and

population, being now, when measured by the actual necessities of life, quite double what it was in 1876. On the other hand, the earning capacity and opportunities of the average lawyer possessing the experience that a Supreme Judge *must* under the Constitution have, and having the ability, habits and character that he *should* possess, have increased in equal ratio with the cost of living, so that such a lawyer can now ordinarily earn in the practice quite as much as, and very frequently a great deal more than, the salary here proposed for a judge of the highest court of the State.

An attorney accepting a position on the Supreme bench must abandon an established practice, and usually he is forced to leave and sell his home and acquire a new one. With no other prospect before him than service on the bench, he must meet and discharge the ever-increasing burdens of living out of his meager salary, with no corresponding increase in his revenue, while his brother lawyer in the practice, the banker, the manager of corporate enterprises, the farmer, the plumber, the electrician and all other employes and workers (except perhaps his companions in distress, the clerks in mercantile establishments) receive greatly increased salaries or wages with which to meet the increased expense of living. Nay, more, the salary of the Supreme Judge has been worse than stationary; it has positively receded, as will appear from the history of the subject set out below.

We can not hope that as great as the honor is of being a judge of one of our appellate courts, it will continue long to draw to these courts and the service of the State the ablest and best members of the profession at the great sacrifice which the acceptance of one of these positions usually now entails.

This State, now great, not only in the possession of an imperial domain, but abounding in wealth and in a growing population, should be unwilling to exact, even if it could, the sacrifice that these judges are called upon to suffer on account of the changed conditions; and, what is of far more importance, it should not be willing to experiment with the danger that may result from such a narrow and parsimonious policy.

If the condition is laid down that the judges of the appellate courts must labor and toil unceasingly to be entitled to a fair compensation, then their past labors will prove their right thereto under the conditions named.

We can gather a fair conception of the customary work of these courts from the history of their labors since they convened last October. When the Supreme Court met in October, 1910, there were one hundred applications for writs of error on file which had not been acted on, since then three hundred and sixty-eight additional applications have been filed, making four hundred and sixty-eight in all requiring the attention of the court. Of this number the court has disposed of four hundred and forty-eight by refusing three hundred and one, granting one hundred and three, dismissing forty-four, refus-

ing in part and dismissing in part two, and leaving eighteen pending; thus acting on at the rate of nearly two applications per day for every working day during the period. Besides this, the court has actually decided one hundred and four cases, which includes eight mandamuses awarded, seven refused, and nineteen certified questions answered.

Notwithstanding this extraordinary exertion, there were on June 23rd, 1911, one hundred and eleven cases pending that had been neither submitted nor set for submission, leaving the court about one year behind in its work.

The record of the six courts of Civil Appeals during the last term, beginning October, 1910, and extending up to about June 20th, 1911, as revealed by the reports of the several clerks of these courts made at the request of your committee is indicated in the subjoined statement.

This statement reveals that in the six courts there were pending when they convened last October, 1,238 appeals; that during the term 931 new cases were docketed and 1,312 cases were decided by all the courts, or on an average 218 by each; that is, nearly a case per day per court for each working day during the term; and that 838 cases were still pending at the end of the term.

This demonstrates, to say the very least of it, that the judges of these courts have neither eaten nor had an opportunity to eat any idle bread. In truth, they, as well as the judges of the Supreme Court, have been working like dray horses under great pressure in an effort to stem the growing tide of work.

Some comparisons, and even our own history, should instruct us by example.

The Constitution of the Republic of Texas, 1836 (Sec. 1, Art. IV) placed no limit on the compensation of the chief justice (who, with the district judges, then composed the Supreme Court of the Republic), and the Act of December 15th, 1836, fixing his salary at five thousand (\$5,000.00) dollars per annum as against four thousand (\$4,000.00) dollars now paid. The Constitution of 1845 provided for a Supreme Court of three judges, each to receive "not less than two thousand dollars annually" (Sec. 7, Art. IV), and by Sec. 36, Art. VII, such salary was fixed at the minimum for ten years. This was increased to three thousand (\$3,000.00) dollars by the Act of February 2nd, 1856 (p. 69).

When this State was prostrated by the misfortunes of the Civil War the Supreme Court was, by the Constitution of 1866, which was adopted by a convention of which Throckmorton was president and O. M. Roberts a member, enlarged to five judges to receive "at least four thousand five hundred dollars" per annum (Sec. 2, Art. IV).

The Constitution of 1869 (Sec. 2, Art. V) provided for a Supreme Court of three judges and a compensation for each of "not less than four thousand five hundred (\$4,500.00) dollars annually" (Sec. 13,

Art. V), which continued until 1876, when the compensation dropped back to three thousand five hundred and fifty (\$3,550.00) dollars per annum for each judge, or \$1,450.00 less per year than that paid by the handful of patriotic citizens of 1836 to the Chief Justice and \$950.00 less than the State paid when impoverished by the Civil War, and only \$450.00 less than the sum which we now dole out for the services of the Supreme Judges after the State has become great and prosperous in every respect, except in the manner in which it starves and cramps its judges.

Only three States pay the judges of their courts of last resort less than \$4,000.00 per annum, they being Florida, South Dakota and South Carolina; seven pay \$4,000.00 per annum, to wit: Arkansas, Oklahoma, Kansas, Vermont, New Hampshire, North Carolina and Texas; thirty-five pay sums in excess of \$4,000.00 per annum, ranging from \$4,500.00 to \$14,200.00 per annum, of which twenty-eight pay \$5,000.00 or over. Sixteen pay \$6,000.00 or over, and seven pay \$7,000.00 or over. Those States paying sums ranging between \$6,000.00 and \$8,500.00 per annum are Indiana, Louisiana, Rhode Island, Minnesota, Iowa, Wisconsin, Michigan, Connecticut, Massachusetts, California, Washington, Ohio and Montana, while Illinois pays *ten thousand dollars* per annum; Pennsylvania pays her Chief Justice \$13,500.00 and Associate Justices \$13,000.00; New Jersey pays her Chief Justice \$10,000.00 and Associate Justices \$9,000.00; and New York pays her Chief Justice \$14,200.00 and Associate Justices \$13,700.00 each.

What we have already said indicates the very large and growing volume of work devolving upon the appellate courts, causing them to labor under great pressure and under burdensome conditions that must necessarily, sooner or later, prevent thoroughness of investigation and mature deliberation and detract from the soundness of their decisions, a condition which can only result in multiplying litigation and aggravating the evil.

The last Legislature gave relief of the Courts of Civil Appeals by Supreme Court. This would be largely accomplished by increasing creating two additional courts, but no relief has been given to the the size of that court—a step greatly to be desired also as a guaranty of thorough investigation and soundness of decision. The experience of other courts so teaches us.

Only seven States of the Union have a court of last resort composed of only three judges, to wit: Texas, Mississippi, Idaho, Montana, Nevada, Utah and Wyoming; one, South Carolina, has a court of four judges; seventeen (including one Territory) have courts composed of five judges, to wit: Arkansas, Arizona, Connecticut, New Hampshire, Rhode Island, Vermont, Oklahoma, Oregon, Louisiana, North Carolina, Virginia, West Virginia, Minnesota, North Dakota, South Dakota, Indiana and Tennessee; five have courts composed of six judges, to wit: Florida, Georgia, Delaware, Iowa and Ohio; ten States have courts composed of seven judges, to wit: Pennsylvania, New York, Cal-

ifornia, Alabama, Colorado, Nebraska, Wisconsin, Illinois, Massachusetts and Missouri; three States have courts of eight judges, to wit: Maine, Maryland and Michigan, while the court of last resort of the State of Washington has nine judges, and the corresponding court of New Jersey is composed of the Chief Justice, the Chancellor and eight Associate Justices, besides six justices specially selected, making sixteen members in all.

Leaving out of sight all other grounds of comparison, it certainly can not be said that the State of Texas is less able, and it should not be said that it is less ambitious, to support a court of adequate size to insure thoroughness and to dispose of the vast and growing volume of work than the thirty-seven States maintaining courts of last resort consisting of five judges or more.

Certainly it must be conceded that a lawyer who has the capacity and character rendering him fit to serve as a judge of one of these courts, and who works as these judges must, deserves to receive the reasonable salary here recommended. To offer less is not only parsimonious, but it is a narrow policy fraught with the greatest danger—that of inviting and obtaining only mediocrity to adorn these benches and discharge the high functions of the judge.

THE INITIATIVE, REFERENDUM AND RECALL.

The initiative, referendum and recall have already been incorporated as companion principles in the Constitutions or statutory law of some States. The Legislature of California recently proposed an amendment to its Constitution to be soon voted on designed to accomplish the same result. Debates in Congress attracting the attention of the Nation, were provoked by similar provisions in the Constitution of the Territory of Arizona just submitted for approval of Congress, which applied the recall principle to all elective officers. In various quarters, not excepting Texas, earnest and sincere advocates of these doctrines are proposing and pressing them as efficient reforms not inconsistent with the structure and spirit of the Republican form of government guaranteed by the Federal Constitution.

Therefore, it will not, we think, be considered inappropriate for your committee in this connection to give expression to its views as to whether this State should resist or encourage the innovations represented by these ideas.

(1) The initiative idea proposes in substance that a certain percentage of the voting population of a State may, through petition, require a direct vote by the people to determine whether any piece of proposed legislation initiated through this instrumentality shall become the law, the issue depending upon the vote of a majority of those participating.

In the nature of things, the application of the initiative precludes investigation by, and advice of committees, orderly debate and delib-

eration by representatives under oath of office, the opportunity to cure faults by amendment, and any such discussion as will effectually reach the bulk of those who are to pass on the measure proposed, which may, indeed, be one of a most serious and intricate nature, involving possibly even those fundamental rights guaranteed by both State and National Constitutions. Furthermore, unless the question be one over which there is great agitation, experience (our votes on constitutional amendments) teaches us that, as a rule, not exceeding and frequently less than fifty per cent of the voters will participate.

In addition to this, the initiative doctrine seems to be entirely at variance with the plan of Republican government known to, practiced, and, therefore, contemplated by the founders of this government—that of a government wherein the laws are made by a small deliberate body of chosen representatives.

Therefore, we recommend that this Association express its disapproval of the initiative as being an impractical and dangerous experiment in government.

(2) The referendum embraces substantially the idea that upon petition signed by a certain small percentage, ranging from five to ten per cent of the voters, a law passed or partially enacted by the Legislature shall be submitted to the voters of the State to determine by direct vote whether it shall stand or fall.

In a certain qualified sense the referendum idea is practiced in this and probably every State. Constitutions or constitutional amendments embracing the fundamental law of the State in general terms are submitted to the people for final enactment. Local option questions are submitted. Bond issues designed for localities are likewise passed on by a direct public vote. The wisdom and necessity of referring such fundamental or local questions are fully recognized. The former because of their general nature will be measurably understood and because of their prime importance and infrequency of occurrence will excite public attention and investigation to a considerable degree, while the latter, from the local nature and simplicity of the questions involved, are usually understood and attract sufficient attention to guarantee an intelligent expression of the voters.

But we believe that it would be unwise and entirely impractical to attempt to extend the referendum to embrace various and intricate statutes on any and all subjects.

If a statute be of doubtful constitutionality, such questions should be referred to the courts alone, they being alone competent to pass on the same. To allow any other tribunal to do so would be to revolutionize our whole scheme of government.

And if it be a question of expediency as to whether a statute should be enacted, continued in force or repealed, the deliberative methods and facilities of a chosen body of representatives can best

perform the task of dealing with such a subject so as to exclude the influence of passion, malice and ignorance.

We, therefore, oppose any application of the referendum principle beyond the limits now recognized.

(3) The recall as generally proposed would subject all elective officers, including judges, to a revocation of their commissions pending their terms of office at the mere will of the majority of those participating in an election ordered upon a petition signed by a small percentage of the voters of the municipality, district or State electing the officer whose tenure is assailed.

In the nature of things, this mode of trial by the popular will forced upon the officer and the public, often through motives of jealousy and malice, must be without formal charges preferred by any impartial deliberative body, without opportunity given to the officer on trial to make answer in an effectual way—such answer as will or can be heard fairly by even a majority of those who are to pass upon his case, and without legal evidence offered or heard in an orderly way and according to fixed rules—all precious rights which the just-minded man has ever thought must be accorded to the accused, though charged with the meanest crime.

The result of the trial thus fastened on the unfortunate officer need not, and in truth, frequently will not turn upon whether testimony given under oath has shown that he has violated or neglected any duty or broken his oath, but it may and must often depend upon what the voting community have heard through the newspapers, gossips and maligners.

As applied to the judge, he must feel, when trying an accused person against whom there is intense feeling or any question that has excited the passions of the public, that he, as well as the accused of the burning issue, is on trial and that he must choose, where a sense of duty leads him against the public current, between adhering to his convictions, on the one hand, and because thereof being subjected to a summary and disgraceful ejection from office by a public vote, and the debasing alternative of a surrender of his own manhood and a sacrifice of the rights involved.

The recall principle would, we are convinced, be a most harmful experiment as applied to any officer, tending to drive away from the public service high-minded, self-respecting and conscientious men who would naturally be unwilling to be subjected to the humiliating choice between a manly adherence to conviction, on the one hand, and a disgraceful ouster from office without an opportunity of defense, on the other hand; and as applied to the judiciary it would be utterly subversive of that independence which our fathers wisely planned that they should enjoy and which every sober and patriotic thought teaches us they must possess if they are to continue to uphold right and justice for the weak and strong alike.

Therefore, we recommend that this Association express its unalter-

able opposition to this proposed innovation in our system of government and laws.

Respectfully submitted,

GEO. C. GREER, Chairman.

JNO. L. DYER.

THE PRESIDENT: I will entertain a motion now to adjourn for the noon hour.

An announcement was made by Mr. Allan D. Sanford with regard to the preparations for the banquet, and then on motion of Mr. Kelley the meeting adjourned until 2 o'clock p. m.

JULY 4, 1911—AFTERNOON SESSION.

THE PRESIDENT: It has been suggested, and I think it a very good suggestion, that before we discuss the papers that have already been read we should hear the paper that will be submitted by the Committee on Judicial Administration and Remedial Procedure. Mr. A. E. Wilkinson of Austin, is chairman of the committee, but he is not present. His report is present, and if there is no objection it will now be read by Mr. McKnight of Dallas.

To Hon. Hiram Glass, President Texas Bar Association:

Your Committee on Judicial Administration and Remedial Procedure beg leave to submit the following report:

Having been unable to secure a personal meeting of the members of the committee prior to the assembling of the Association for its annual session of 1911, and being advised that a majority of the committee will be unable to attend that session, they find themselves under the necessity of reporting the various matters upon which they have exchanged views by correspondence, laying the suggestions therein contained before the Association with such indication of the views of the several members thereon as may serve in the place of distinct recommendations by the committee. There have been developed some marked differences of opinion in the committee, and nothing in the way of proposed change in the law can be laid before the Association as a distinct and unqualified recommendation of a majority of the committee.

Two proposals have chiefly formed the subject of their correspondence and these will be separately considered in this report.

(1) The changes in appellate procedure recommended by the American Bar Association.

After mature consideration by committees of able and representative lawyers, that Association concurred in the adoption of a measure intended to meet the complaints of delay in the disposal of causes due to repeated reversals by the appellate court upon technical errors

of law not involving the real merits of the controversy. The resolution which met their approval is as follows:

"No judgment shall be set aside, or new trial granted, by any court of the United States, in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

Other proposed changes by the American Bar Association refer to the submission of cases upon special issues, and have not received special consideration, because in part covered by our present statutes, and so far as so covered being, in the opinion of at least a majority of the committee, better provided for by the plan hereafter to be mentioned.

Messrs. Bryan and Wilkinson, of the committee, concur in recommending the adoption of a resolution favoring the change in our appellate procedure as recommended by the American Bar Association and above set forth.

Messrs. Spooner and McKnight are opposed to such change, the former stating that it will, in his opinion, "put it within the power of any trial court to absolutely destroy rights of litigants, and take from the appellate courts the right to correct the error."

As a substitute for the proposed change Messrs. McKnight and Spooner concur in recommending the following:

"In the trial of all civil cases before a jury the trial judge shall submit to the jury for special findings such material issues of fact arising upon the pleadings and evidence as either party to the case may, in writing, request to be submitted, reserving all questions of law arising in the case for subsequent argument and decision, and any material issue of fact not so requested to be submitted shall be determined by the trial judge, or by any court to which the case shall thereafter be taken on appeal or by writ of error; and no judgment in any such case shall be set aside or reversed for a failure to submit to the jury any material issue of fact in the case, unless a submission of such issue be requested in writing by the party complaining.

"For errors in the admission of evidence or the giving or refusing of instructions in any case, civil or criminal, the judgment shall be set aside or a new trial granted, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall reasonably appear that the error complained of has not resulted in a miscarriage of justice. For any other error as to any matter of pleading or procedure, no judgment shall be set aside or a new trial granted by any court in this State, unless in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear probable that the error complained of has resulted in a miscarriage of justice. If it reasonably appears, in the opinion of the court to which application is made,

after an examination of the entire cause, that the trial of the case has resulted in a miscarriage of justice, a new trial shall be granted or the judgment set aside; provided, that it shall be the duty of the trial court, or any court to which the case may be removed by appeal or writ of error, when the findings or verdict of the jury is set aside, or the judgment reversed, to render such judgment as, under the law and facts, may be proper; except when it is necessary that some further matter of fact be ascertained, or the damage to be assessed or the matter to be decreased is uncertain, in either of which events a new trial shall be granted, or the cause shall be remanded for a new trial."

Mr. Wilkinson, while preferring the American Bar Association's plan as being a less radical departure from our present procedure, and therefore one more likely to secure the approval of the profession, joins in the recommendation of the plea of Messrs. Spooner and McKnight as an alternative, in case the other fails to secure the approval of this Association.

Mr. Bryan also joins with Messrs. Spooner and McKnight in their recommendation as an alternative, thus uniting all four members of the committee on the alternative proposition.

It may be added that the committee have not had the advantage of the views of Mr. W. S. Thomas, the other member, upon this or other of the matters here discussed.

In connection with this subject, attention is called to the action of the Association, at its last meeting, in adopting the following recommendations with reference to the submission of causes on special issues:

"Resolved, That we favor such amendment of the statute as shall require a trial judge to submit all issues in cases where a jury is demanded on special issues, unless, with the consent of both parties to the suit, he prefers to charge the jury as under our present law."

Also the action of the Association at its last meeting with regard to pleading and abolishing the general denial and plea of not guilty.

(2) During the regular session of the present Legislature, at the suggestion of some of its members, the Supreme Court was asked to frame a bill on the subject of its jurisdiction, which might relieve that court from the pressure of more work than it could well perform, without impairing its usefulness. The bill, which is understood to have been drawn by Mr. Justice Williams, but to embody the views of the court as then constituted, has been submitted to the members of the committee, and this also has developed differences of opinion as will be hereafter shown.

The bill as prepared by them was as follows:

"A bill to be entitled An Act to amend Articles 940, 941, 943 as amended by the Act of April 30th, 1901, and 946 of the Revised Statutes, defining the original and appellate jurisdiction of the Supreme Court, and regulating practice therein, and also Articles 996, 1040 and 1041 of the Revised Civil Statutes, defining the jurisdiction of the

Courts of Civil Appeals, and regulating practice therein, and repealing Articles 1029c and 1029d added to the Revised Statutes by Act of May 9th, 1899, and 1043 of the Revised Statutes, so as to define anew the jurisdiction of said courts in their relation to each other, and to conform to changes so made the named provisions of the Revised Statutes relating to the same subject.

"Section 1. Be it enacted by the Legislature of the State of Texas, that Articles 940, 941, 943 as amended by the Act approved April 30th, 1901, 946, 996, 1040 and 1041 of the Revised Civil Statutes of said State be so amended as hereafter to read as follows:

"Article 940. The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in civil causes in the Courts of Civil Appeals in the following cases when same have been brought to the Courts of Civil Appeals by writ of error, or appeal, from final judgments of the trial courts:

"(1) Those in which judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

"(2) Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

"(3) Those involving the validity of statutes.

"(4) Those involving the revenue laws of the State.

"(5) Those in which the Railroad Commission is a party.

"(6) Those in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals has, in the opinion of the Supreme Court, erroneously declared the law of the State in such way as materially to injure its jurisprudence, in which case the Supreme Court may, in its discretion, take jurisdiction for the purpose of correcting such error.

"The jurisdiction defined in this Article shall constitute the whole of the appellate jurisdiction conferred on the Supreme Court and shall exist without regard to the character of the action or the amount or value of the matter in controversy, and whatever may be the character of the judgment rendered by the Court of Civil Appeals.

"Article 941. All causes mentioned in Article 940 may be carried to the Supreme Court either by writ of error, or by certificate from the Court of Civil Appeals, as elsewhere provided, except those mentioned in subdivision 6, which must be presented by application for writ of error.

"Article 943. If upon inspection of the petition for writ of error and the record of the cause, it shall appear that a Court of Civil Appeals has failed to file conclusions of fact, or has not complied with the requirements of the law in filing such conclusions, and that such conclusions are necessary to enable the Supreme Court properly to determine the rights of the parties, the court may suspend action on the petition for writ of error and return the record to the Court of

Civil Appeals, with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court. If upon examination of the petition for writ of error the Supreme Court shall find the case to be one of which it may take jurisdiction and that there is such a difference of opinion among the judges of the court from which the cause shall come, or such a difference between the decision brought in question and decision of another court as is specified in Article 940, or that the question involving the validity of a statute was erroneously decided, or that, in a case involving the revenue laws of a State, or to which the Railroad Commission is a party, any question of law material to its correct decision was erroneously decided, or that such an error is shown as is contemplated by subdivision 6 of Article 940, the court shall grant the writ for the purpose of deciding the question as to which the difference exists, or of correcting the erroneous decision and rendering the judgment in which a correct decision hereof shall result.

"Article 946. The Supreme Court, or any justice thereof, shall have power to issue writs of habeas corpus as may be prescribed by law; and the said court, or the justice thereof, may issue writs of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said court; and *said court* may issue writs of quo warranto or mandamus agreeable to the principles of law regulating such writs against any district judge, or Court of Civil Appeals or judge of a Court of Civil Appeals or officer of the State government, except the Governor of the State.

"Article 996. The appellate jurisdiction of the Courts of Civil Appeals shall extend to civil cases within the limits of their respective districts:

"(1) Of which the district courts have original appellate jurisdiction; *but where the district court has jurisdiction of appeals from justice's courts, the appellate jurisdiction of the Court of Civil Appeals shall be subject to the same limitations as exist with reference to cases appealed from justice's to county courts.*

"(2) Of which the county court has original jurisdiction.

"(3) Of which the county court has appellate jurisdiction when the judgment or amount in controversy or the judgment rendered shall exceed one hundred dollars exclusive of interest and costs. The judgments of the Courts of Civil Appeals shall be conclusive on the facts of the case in all cases and conclusive on both law and fact in all cases, *except those in which appellate jurisdiction is given to the Supreme Court.*

"Article 1040. When the Courts of Civil Appeals shall have finally decided any cause wherein the judges disagree upon a question of law material to a decision of the cause, or wherein the court may differ from another of the courts specified in Article 940 in its decision of any such question of law, or wherein the validity of a statute is involved, or wherein the revenue laws of the State are involved, or

wherein the Railroad Commission is a party, such court may certify to the Supreme Court the question upon which its judges differ or the question upon which the decision of the court differs from that of such other court, or the question or questions as to the validity of the statute, or the very question or questions on which the decision of the cause wherein such revenue laws are involved, or the Railroad Commission is a party, depends to the Supreme Court for decision.

"Article 1041. The court shall clearly and succinctly state in the certificate the question or questions for decision accompanied by findings of fact and other matters from the record sufficient to show how such question arose and how it affects the decision of the cause, and shall cause such certificate to be authenticated by the Chief Justice, or, in case of his failure or refusal for any cause to act, by the two associate justices, and cause the same to be sent up to the clerk of the Supreme Court, with copies of briefs on file and of the motion for rehearing if there be one. And the Supreme Court may order the entire record to be sent up if deemed advisable and allow amendments to be made to the certificate by the Court of Civil Appeals at any time before the submission of the cause in the Supreme Court. And said court shall, if the certificate be found sufficient to present the question, order the cause to be set down for argument and proper notice to be given.

"Sec. 2. Be it further enacted that Articles 1029c and 1029d added to the Revised Statutes by the Act of May 9th, 1899, Laws Twenty-sixth Legislature, page 170, and Article 1043 be and the same are hereby repealed.

"Sec. 3. Be it further enacted that the jurisdiction of the Supreme Court over all cases pending therein when this Act takes effect, whether an application for writs of error or otherwise, shall continue as it was before, and such causes shall proceed and be disposed of in accordance with the practice and procedure prevailing before the taking effect of this Act."

This measure, it will be seen, enlarges, in some respects, the jurisdiction of the court, while in others it restricts it. They are no longer confined to a consideration of final judgments by the appellate courts, but may grant writs of error in cases reversed and remanded. On the other hand, by Section 6 of the proposed bill, they are given discretion as to the character of cases, in which they shall grant the writ. They are to grant it only in cases where the ruling, in their opinions, is such as to materially injure the jurisprudence of the State, a pretty indefinite term, leaving it exceedingly difficult for the practitioner to determine in advance whether his case is one over which the court would take jurisdiction.

This clause has called forth some criticism from all the members of the committee. It appears, also, that it was by no means satisfactory to the framers of the bill themselves. On conference with them it was found that their view was, in substance, that in matters

merely of procedure, such as the admission or exclusion of evidence, the sufficiency of pleading or other error affecting merely the adjective law, and in which no conflict with other decisions in the State was disclosed, the decision of the Court of Civil Appeals should be final; but that the Supreme Court should have power to grant the writ where the ruling, though not disclosing a conflict with other decisions, showed error in matters other than remedial or adjective law.

The following form for Section 6 of the bill was suggested, and met with approval. It may be considered as substituted for that section as originally drawn, with the approval of the authors of the proposed bill, and may possibly remove some of the objections to that paragraph raised by members of the committee:

"6. Those in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals has erroneously declared the *substantive* law of the State."

This change in the phraseology of the section assumes that the term "substantive law" has a definite meaning as a legal term, and that its use in the statute will remove the imputation of vagueness and uncertainty in the jurisdiction conferred on the court by this section, while meeting the mischief designed to be remedied by the bill.

The term is thus defined in Black's Law Dictionary: "Substantive Law. That part of the law which the courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law which creates, defines and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion."

It was Section 6 as originally prepared which was submitted to the committee for their opinion and their criticisms following were addressed to that form of the enactment.

In regard to the proposed bill, Mr. Spooner writes:

"With regard to the bill prepared by the Supreme Court, I confess that I hardly comprehend what subdivision 6 of Article 940 relates to. The great number of writs of error granted by the Supreme Court bears strong testimony to the numerous errors committed by the Courts of Civil Appeals, and I am afraid the effect of this amendment would be to practically wipe out the Supreme Court, so far as the ordinary litigant of the State is concerned. When I consider the vast amount of business transacted by the United States Supreme Court, the great number of cases decided and the labor that is devoted to writing opinions in that court, I confess that in my judgment the best thing to do in Texas is to increase the number of judges of the Supreme Court, and let it retain the jurisdiction it now has. Any other action would result in such confusion and impairment of our judicial system that I fear for the effect."

Mr. McKnight, of the committee, says:

"I have not had time to digest fully the bill accompanying your letter, but would like to suggest some changes in it.

"The third subdivision of Article 940 should read:

"Those involving the validity or construction of the statutes of the State or Acts of Congress."

"The fifth should read: 'Those in which the State or the Railroad Commission is a party.'

"I believe at least one other class of cases should be included, viz.: those wherein some right, title, privilege or immunity is claimed under the Constitution of the State or of the United States and the determination thereof is necessarily involved in a decision of the case.

"I think the Supreme Court should have jurisdiction such as is mentioned in subdivision 6, and possibly the language should be changed so as to define the idea more clearly and accurately, but I have no suggestion to make at this time.

"I suggest that at the end of Article 943 there be added a sentence requiring the Supreme Court, when it refuses an application for writ of error, to state the reasons therefor or the authorities upon which its holding is based, and that such opinions be recorded and reported as provided in Article 974. This will entail additional work upon the Supreme Court, it is true, but, under the existing practice, we can not know, except in rare instances, what the court thinks of legal questions arising in cases in which writs of error are refused.

"How would it do to give the Courts of Civil Appeals appellate jurisdiction in the cases mentioned in Article 996 co-extensive with the limits of the State and elsewhere make provision for the districts to which appeals shall be taken and the equalization of the dockets of the various courts? I suggest this not as a matter of substance but as a more logical presentation of the law.

"There probably should be a limitation to subdivision 2 of Article 996, confining the appellate jurisdiction of the Courts of Civil Appeals to cases where the amount in controversy or the judgment rendered shall exceed \$100, exclusive of interest and costs. This suggestion is made for the reason that in two South Texas counties the county courts have been given concurrent jurisdiction with the justice courts in substantially all cases, and suits brought originally in the county courts of these counties for less than \$100. Litigants there should not have privileges denied to litigants in other parts of the State.

"Article 1040, it occurs to me, could be eliminated by adding perhaps a very small part of it to Article 941, and Article 1041 could, I think, be improved by omitting a part of it and embracing the substance thereof in Article 943."

Mr. Bryan, of the committee, says:

"With regard to the bill for relief of the Supreme Court, I am disposed to be guided by the advice or suggestion of the members of that court. I am also favorably impressed by some of the suggestions made by Mr. McKnight. It occurs to me that it might be well to have Article 940 of the proposed bill to read as follows, viz.:

"(3). Those involving the validity or construction of the statutes.

"(5) Those in which the State or Railroad Commission is a party.

"Subdivision (6) does not seem to me to be happily worded. I have been unable to satisfy myself as to the phraseology that should be used, though I suggest that the words, 'in such way as materially to injure its jurisprudence' be stricken out and these words substituted, viz.: 'involving some principle of law of general application.' I am in favor of taking away from the Courts of Appeals the appellate jurisdiction of cases originating in the justice of the peace court, that is, I think, that a case filed in the justice of the peace court which is appealed to the county court, having had two trials, is all that should be given the parties. Therefore, I suggest that we strike out the first three lines of subdivision 3 of Article 996. This will be some relief to the Court of Appeals, and a great deal of relief to litigants who have only a small amount involved in the litigation and assure the successful litigants in getting something tangible at the end of the litigation. Just now I am not favorable to repealing Articles 1029c and 1020d, which provide for the Court of Appeals certifying questions in a case when the judges find that they have disagreed among themselves or with the decision in some other case, as it has always seemed to me that it was unfortunate to let an opinion get in circulation by letting one Court of Appeals render a decision contrary to decision of another Court of Appeals, and this could be avoided by having the Supreme Court decide the difference without delay. In this connection it has occurred to me that the opinions of the Court of Civil Appeals should not be published or given wide circulation through the law reporters until they have really become final, that is by the Supreme Court having refused a writ of error."

Mr. Wilkinson of the committee approves the bill with Section 6 changed as above proposed.

The correspondence of the committee accompanies this report and may be consulted, if desired, for a better understanding of the views of the various members on the points considered by them.

Your committee would also note the receipt from Mr. John C. Harris, of a copy of a letter from him suggesting certain changes in organization, jurisdiction and practice of the appellate courts of the State, which is also attached to the correspondence accompanying this report. This communication was received too late to enable its contents to be submitted to the committee or obtain the views of the members thereon.

With apologies to the Association for its inability to reach more definite and harmonious conclusions than are here presented, as possibly might have been done had their other duties enabled the committee to meet for personal conference and free exchange of views,

the foregoing report is respectfully submitted for the consideration of the Association.

A. E. WILKINSON.

Chairman Committee of Judicial Administration and Remedial Procedure.

JUDGE OCIE SPEER: Gentlemen, I have, as very kindly suggested by Mr. McKnight, a proposed bill looking to the amendment of our statutes for the purpose of securing remedial court procedure. My proposed bill is complete within itself, and, therefore, it will be impracticable to substitute any part of it for any recommendation therein, and I do not desire to substitute what I have in my pocket for that bill, so as to cut off a consideration of that one at all, but I would like to present my suggestion along with that, so that the Association may have the benefit of all the suggestions we offer it, that we may thrash out the best, and if you will permit me to read it now I will not make any motion that it be substituted or tacked on as an amendment, but merely read it for the benefit of the suggestion it may be to the discussion.

THE PRESIDENT: No objection being made, Judge Speer will come forward and read his proposed bill.

Be it Resolved by the Bar Association of Texas: That we recommend to the Legislature the following changes in the statutes affecting the jurisdiction of our appellate courts in civil matters, and to this end urge the Governor to submit the same for the consideration of the Legislature at the coming called session thereof, viz.:

That Articles 940, 941 and 996 of the Revised Statutes be so amended as hereafter to read as follows:

"Art. 940. The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in all civil cases wherein a Court of Civil Appeals has exercised jurisdiction:

"1. Where the State is a party, or the Railroad Commissioners are parties.

"2. Where the construction and application of the Constitution of the United States or of the State of Texas or an act of Congress is involved.

"3. Where the validity of a statute of the State is involved.

"4. Where the title to a State office is involved.

"5. Where a revenue law of the State is involved.

"6. Where any Court of Civil Appeals overrules or conflicts with

its own decision or the decision of another Court of Civil Appeals or of the Court of Criminal Appeals or of the Supreme Court; and such conflict of decision shall be held to include any violation of the principles of law necessarily involved in such prior decision.

"And the Supreme Court shall have original jurisdiction to issue its writ of mandamus directed to any State official or acting State official, other than the Governor, commanding the performance of any act required by law when the duty to perform such act is clear, and no issue of fact is involved; and to issue its writ of mandamus directed to the Lieutenant Governor or acting President of the Senate, or to the Speaker or acting Speaker of the House, commanding him to sign any bill or joint resolution passed by the House over which he presides, when the only ground of such officer's refusal is that such bill or joint resolution violates some provision of the Federal or State Constitution, or that he has doubts of its validity. Such writ may be granted upon the sworn petition of any citizen or other interested applicant, and in all such proceedings it shall be the duty of the Attorney General to represent the State, maintaining the validity of such bill or joint resolution; and the petition shall be heard and determined in advance of all other cases; but no costs shall ever be taxed against the State or the officer so refusing to sign such bill or joint resolution.

"Art. 941. All cases shall be carried up to the Supreme Court by writs of error to the final judgment of the Court of Civil Appeals, whether such judgment be one of affirmance, reversal or otherwise.

"Art. 996. The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts:

"1. Over which any district court or district judge has or has attempted to exercise original or appellate jurisdiction.

"2. Over which any county court or county judge has or has attempted to exercise original jurisdiction, or has or has attempted to exercise appellate jurisdiction when the value of the subject-matter or the amount in controversy shall exceed one hundred dollars, exclusive of interest and costs.

"The judgment of the Courts of Civil Appeals shall be conclusive in all cases on the facts of the case, and the judgment of such courts shall be conclusive on the law, nor shall a writ of error be allowed thereto from the Supreme Court, in any case except in those cases wherein appellate jurisdiction is expressly given by law to the Supreme Court.

"The Courts of Civil Appeals shall have original jurisdiction upon the sworn petition of any citizen or other interested applicant to determine the validity or invalidity of any statute of this State as against the objections that such statute is in violation of some provision of the Constitution of the United States or of this State, which said objection shall be set forth in the petition, and such proceed-

ings shall have precedence in said courts over all other cases, and it shall be the duty of the Attorney General to represent the State therein, maintaining the validity of such statute. The proceeding shall be docketed in the name of the complainant versus the Attorney General of the State, and such notice served upon the Attorney General as the court may direct."

OCIE SPEER.

THE PRESIDENT: The papers are before the Association for its discussion and such disposition as you desire to make of them.

JUDGE I. W. STEPHENS: Mr. President and Gentlemen, I want to make one suggestion with reference to the proposed change in judicial proceeding which seems to be giving trouble to those who have undertaken to substitute a new course of procedure for the government of the courts, and that is with reference to Subdivision 6, which it seems by common consent is not satisfactory. It certainly is not satisfactory to my mind, because of its vagueness, and I presume that objection is general in the minds of the profession. It does not seem to me, however, that there is any serious difficulty in accomplishing what was in view in the preparation of Subdivision 6, if we will observe the following suggestions. The purpose, evidently, of that proposition is that the Supreme Court, as the court of final jurisdiction, should, so to speak, keep the law straight. The rules by which cases are to be decided, by which courts are to be governed in the decisions of cases, should be kept straight, kept uniform, and kept correct. Now, that purpose can be very easily accomplished, I think, if we will allow a writ of error to the Supreme Court on all questions of law, and define what we mean in the article defining the jurisdiction of the Courts of Civil Appeals, in which it is declared that their judgment shall be final upon all questions of fact. It was contended—in fact, I think some member of the Court of Appeals wrote an opinion to that effect—that it was the purpose of this amendment to the Constitution, of this judicial article, in the first instance, to make the findings of the Courts of Civil Appeals as to what was in the record binding on the Supreme Court. For what reason? The Supreme Court would be relieved of the time and labor and burden of searching the long transcripts that are brought up before the Courts of Appeal.

JUDGE SPEER: Is not that the practice now?

JUDGE STEPHENS: No, sir. The Supreme Court adopted the rule—dissenting from the views of the Court of Civil Appeals of which I was a member—and said that as to whether there is any evidence in the record of a given fact is a question of law; that as to whether the evidence raises a question for the consideration of the court and the jury is a question of law; that that is a question for the court. We will admit it was a question for the trial court, but in framing this article it has always been my idea that they intended that all such questions as those should be determined by the Courts of Civil Appeals, and for this reason: Presuming now that the Supreme Court have the superior wisdom that is accorded to them, as they represent the wisdom of the whole State, it is not to be supposed, and was not to be supposed, that the three judges composing the Supreme Court would be any better capacitated, after reading the record, to determine whether or not an issue of fact on a given point was raised than the Court of Civil Appeals. That simply requires a careful scrutiny of the transcript. Therefore, if you will interpret that declaration there that the Court of Civil Appeals shall be final upon all questions of fact, to include the proposition that their conclusions shall be binding upon the Supreme Court as to whether there is any evidence of a given fact in the record, or as to whether any issue was raised, if you will give it that interpretation, the Supreme Court will then have nothing to do but to keep the law straight. If the Court of Civil Appeals violates some principle of law that governs that case, and every other case like it, the Supreme Court takes hold of that on the findings and holdings of the Court of Civil Appeals as to what is in that record, which they have read and are supposed to have sense enough to know what is in it. You thus relieve the Supreme Court of passing upon the merits of every particular case. You say that it may be that the Court of Civil Appeals will err, and, as Judge Gaines says in one opinion he wrote, replying to the views expressed by the Court of Civil Appeals, if the Court of Civil Appeals should find that black is white, is the Supreme Court bound by that? Well, suppose that, unfortunately, the Supreme Court should find that black is white. Just suppose that the three men who have read the transcript and seen all that is in

there should find that. The litigants have got to be bound by somebody's finding, and why not require them in the particular case to be bound by the findings of the Court of Civil Appeals, in the individual case, as to whether or not there is evidence raising a given issue, and treat that as conclusive upon the Supreme Court, and then there is nothing left for the Supreme Court to do but to keep the jurisprudence straight, or to decide questions of substantive law. It seems to me that that view, if you will give it proper consideration, will solve all these questions. The Court of Civil Appeals says that in this case the court submitted an issue not raised by the evidence. They have read the record and read the evidence. They are three men, impartial, removed from the excitement of trial. They say there is no evidence here raising that issue, and the court ought not to have submitted it. That ought to be binding on the Supreme Court. They ought not to inquire any further. That won't bind any other case that will be a precedent. The Court of Appeals' finding will be a precedent for no other case. It settles that case. They say the court admitted evidence that tended to prove so and so. It was admissible because it tended to prove so and so. The Supreme Court says: "We do not think it tends to prove that." But in that particular case, having the record before them, the Court of Civil Appeals thought that it did. They may have erred, but the Supreme Court might err. Why should that not be made final with the Court of Civil Appeals? If you will apply that test, if you will make that application of the principle of the judgment of the Court of Civil Appeals being final on the facts, you will practically reduce the work of the court of final jurisdiction to the consideration of pure questions of law, and all pure questions of law should go up on writ of error. Those are the suggestions I have to make.

MR. WHARTON: Wasn't it your idea that the original statute did just what you say?

JUDGE STEPHENS: I think it was intended that way, but it has been construed otherwise, and we can make a statute that would not have that effect. Of course, my proposition heretofore has been to curtail all this appellate jurisdiction by confining appeals from the trial court to writs of error on their

merits, but that was overruled at our last meeting. Since then they have gone ahead and created more courts of Civil Appeals, and they have got plenty of time to examine these records and make their findings upon them and see whether the evidence is sufficient, whether there is any evidence or no evidence, so that the party presenting the case to the Supreme Court will have nothing to present but pure questions of law, and all pure questions of law, if wrongly decided, are injurious to the jurisprudence of Texas.

MR. W. W. BALLEW: I am opposed to the suggestion of Judge Stephens. I have in mind a number of cases where various Courts of Appeals in this State have put into the statement of facts things that were not in the record, and the Supreme Court has granted writs of error, and I can name the cases. (Laughter.) I was not connected with all of them, but the Supreme Court has granted the writs of error and reversed and rendered the opinion of the Court of Civil Appeals on the express ground that there was nothing in the record to bear out the facts found by the Court of Civil Appeals. It reversed and rendered one for me not long ago. They reversed and rendered one from San Antonio for another lawyer friend of mine, where they reversed and rendered a \$20,000 verdict. Courts are human. When a lawyer goes on the bench he has never cast aside any of his humanity. He may try to have no pets, but if he has not got pets he may have it in for the other fellow, and I have known of decisions being rendered by the Court of Civil Appeals where they affirmed without stating the facts and without citing a single authority cited by the attorneys against whom they found, and I have known them to reverse cases without noticing a single authority cited by the other fellow. I don't know what the ground was——

MR. T. S. HENDERSON: Wouldn't the recall apply in cases of that kind?

MR. BALLEW: No, sir. I am opposed to the recall, too, because when a judge gets in office for six years, if I have been opposed to him, he is entitled to it, and if I have been in favor of him I want him to hold it. I want to go upon record upon

the floor as absolutely endorsing Mr. Greer's entire paper. I think the ruling of the Supreme Court is absolutely correct, and I am here to endorse it as a lawyer, that when the Court of Civil Appeals certifies as a fact that which the record does not show, and complaint is made, and the Supreme Court examines the motion for writ of error, and finds that the lawyer is quoting the record correctly, and that the Court of Civil Appeals has found something as a fact that is not in the record, that, then it is a question of law. I think it is a question of law right smart, and I think the Supreme Court rule is correct, and I do not want to see it amended. I am perfectly willing to cut off appeals, but my idea of reforms is that they ought to begin at the bottom. The reversals that have been made by the courts have not always been wrong. The errors may be made in the lower courts, and especially in criminal cases they may be made in the lower courts, and I do not know why there should be criticism of the courts for reversing cases so often on technicalities. I have always been taught that a constitution and a statute meant a positive law and guaranteed or preserved a positive right, and when the laymen and the critics begin to denounce courts for reversing cases, when they knew nothing about the points involved, and call it a technicality, I say there is nothing on earth in the Constitution or in the statute but what is a right guaranteed to the people, and if a man has been denied a single one of those things he has not had a fair trial. Now, I am sort of opposed to that sixth section that they have been trying to pass. I want every law on the statute book and every decision to be certain. I want to know what the law is. I am not going to criticise either the Supreme Court, the Courts of Civil Appeals or the Court of Criminal Appeals, but I am going to make this statement: Recently, and it pained my heart, and I was mortified at it, in the trial of a case at home, when the court house was crowded—(it was a criminal case)—when a lawyer was giving his views and quoting his authorities on his position, the district judge made the statement that he did not agree with the last decision even on it, and the prosecuting attorney, in answering, said: "Well, that was the law until today, but the Court of Criminal Appeals is in ses-

sion today, and I don't know whether that is the law or not." I was mortified at that criticism. I say the certainty of the law is what we need, and we want a system that will put better men on the trial court, because it takes a better lawyer for a trial judge than it does for an appellate judge. He has got to know the law, and has got to rule now, and the appellate judges have time. We have got to begin the reform there. I am opposed to the eternal criticism of grand juries, of political preachers and of political lawyers and newspapers, who do not know what they are talking about, forever criticising the higher courts of this State for reversals of cases that they do not know anything about. (Laughter and applause.) I have never seen a case reversed yet, and never expect to see a case reversed in the future, but what there has been a miscarriage of justice, and if a person has been denied a single right under the Constitution or statutes, then he is entitled to have his case reversed. We send our boys to the law school for three years, and let them learn all about pleading, as they think, and all about evidence and elementary rules that anybody knows, and here comes a little Legislature and passes rules of procedure and practice and repeals all you have ever known. (Applause and laughter.) There is no lawyer today who can safely advise his client. I thought twenty-four years ago that I knew all the law, and I will swear today that I do not know of a single proposition of law on which I know what the law is. (Laughter.) There is something wrong somewhere. (Laughter.) I would like to see this Bar Association go on record as requesting the Governor, at the next called session of the Legislature, to submit a constitutional amendment to require every man who goes to the Legislature to take a four years' literary course in the State University, a three years' course in the law department and about five years' course in studying political economy and the science of legislation (laughter) and then have the Legislature never to meet oftener than once in every ten years, and repeal everything that has been enacted for the past twenty. (Laughter and applause.)

JUDGE C. H. JENKINS: Mr. President and Gentlemen—The matter presented in the report and the proposed bills which have

been read and the suggestion of Judge Stephens present matters of the very gravest import. We may have whatever levity we please. We may criticise newspapers and grand juries, but the facts remain, known to every lawyer who is familiar with procedure, admitted by every publicist and by the leading lawyers of the United States, that our court system of procedure belongs to the dead past. (Applause.) Whose fault is it? You say the Legislature wants to pass a law repealing all your boy has learned in three years in the State University. I heard that appeal made on the floor of the Legislature which induced these briefless barristers to stand by the procedure of this kind, instead of presenting something that was plain and practical and of practical aid to men. I say it is the fault of the lawyers, who have been in the majority of the members of the Legislature in this State for fifty years. It is now the consensus of opinion, with lawyers as well as laymen, that our procedure is a failure. We have got to get above the idea that a lawsuit is a game of chance, a game of chess, where, if you learn the rules of the game, you can checkmate a man here and there. A lawsuit is for the purpose of obtaining justice, and the common sense of the common people is demanding it, and if we refuse to adopt some such measures as have been presented here by the committee, the day is coming, and now is, when the scepter shall depart from Judah. Shiloh will come. A common sense people, who have been outraged by our refusal to do it, will do what we ought to do. Let us adopt the report of the committee that is suggested. Let us make such amendments as Judge Stephens has suggested. Is that any criticism of the Supreme Court? Not a bit of it. A law was passed which the Supreme Court has interpreted differently from the Court of Civil Appeals—but, I grant you, correctly—by which this burden is cast upon the court, not of their seeking, but because they were compelled to under the statute as they saw it. All that Judge Stephens suggests is that you make that statute plain and take that burden away from them, so that the finding of the Court of Civil Appeals upon facts, or whether there be facts or not, shall be final, and pure questions of law shall be left for the Supreme Court. Now, why not? Why, gentlemen will say that this Court of Appeals made

this blunder and made that blunder. So they have, and so they will continue. But is not the court of which the gentleman complains, the Court of Criminal Appeals, a Supreme Court in this State as absolutely supreme in criminal matters as is the Supreme Court in civil matters, and yet of that Supreme Court he tells you, you can announce what the law was yesterday, but as they are in session you do not know what it is today. No more adverse criticism could be made upon any Court of Civil Appeals.

Mr. BALLEW: That criticism was made by another party.

JUDGE JENKINS: Yes; made by another party and made by many parties. I have heard it for years. Now, Mr. Chairman, there is necessarily some uncertainty in the law of human affairs. Men will make errors, whether they are on the trial court, the Court of Civil Appeals, or the Supreme Court, but we have now in this State eight Courts of Civil Appeals, and if those twenty-four men have not disagreed upon a question of law, is it not about as certain as we can get in human affairs that they are correct, and when one disagrees with the other twenty-three it goes to the Supreme Court and the matter is settled—settled as it ought to be, not necessarily better than it was settled before, but settled. There must be some supreme authority, that we may have uniformity, and we yield to the decision of the Supreme Court, first, because we can trust their wisdom, and, second, though human they be, there must be some ultimate authority. Now, I was not in the hall at the beginning of the reading of this report, but as I gathered, with reference to the matter of pleading, it simply stated what the resolution was that was adopted at the last meeting, but I did not gather whether or not it made any recommendation on that question. I would like to inquire of the chairman of that committee whether or not they have recommended the resolution adopted at the last meeting.

Mr. BRYAN: The members of the committee were unable to get together. In our correspondence we indicated that should be the course, but yet at the same time I could not say that we recommended it, because we were not in a position to do so. Mr. McKnight and myself recommended it.

JUDGE JENKINS: The matter is now before us, I presume, upon a motion to adopt the report of the committee?

THE PRESIDENT: A motion of that kind would be in order. The report is not agreed to entirely.

A DELEGATE (name not secured): There is nothing in that report to adopt. It does not recommend anything.

JUDGE JENKINS: If it had been upon a motion I was going to offer an amendment, by including the resolution with reference to the pleadings, but if not I shall wait until some other time to take it up.

THE PRESIDENT: Not only this paper, Judge Jenkins, that has been read since noon, but two papers read just immediately before we adjourned for the noon recess, are before the Association for discussion—all three of the papers.

JUDGE JENKINS: I was not well during the forenoon and had to leave before we adjourned. I took it for granted there was something before us, but until there is a motion I do not care to discuss it any further.

MR. WHARTON: I think the great question is: Shall we have two appeals or one? The gentleman from Texarkana in his paper this morning suggested one appeal. I should like to hear from some of these older and wiser men about that.

MR. BURGESS: If I catch the drift, it can hardly be called a committee report, because there is no uniformity of opinion among the members. There are several suggestions from the last committee and also a proposed bill of Judge Speer's. It seems to me we are going to be in no position to vote upon the question intelligently unless we have an opportunity to read and carefully examine the proposed bill. We ought not to go on record and make recommendations to the Legislature fixing the jurisdiction of all the courts in this State through bills that only two or three members of all those present have read, and therefore, as there is no motion before the house, I move that the Secretary be instructed to have printed and ready for distribution by tomorrow morning's session 250 copies of the proposed bill of

Judge Speer, and of so much of the committee report as proposes to fix the jurisdiction of the courts, and that the action of the Association on these several bills and several proposals be made a special order immediately after the delivery of the annual address tomorrow.

MR. BRYAN: Mr. Burges, fix it so that the bill suggested by Judge Wilkinson will be included. That bill was proposed.

MR. BURGESS: What I want to get is all the actual propositions that are going to be submitted for us to vote on, to carry the recommendation of approval or disapproval of this Association. I think they ought all to be printed, so that we may read them and know exactly what we are voting on. I do not believe any man, in justice to himself, can afford to vote on a bill of twenty or thirty clauses, fixing jurisdiction, granting it or denying it, unless he has it before him and can study it and study all the parts. Therefore, if I can get a second, I now move that the Secretary be directed to have printed and ready for distribution by the meeting tomorrow morning, 250 copies of the bill as prepared by Judge Wilkinson, and of the bill proposed by Judge Speer, and any other recommendations of affirmative legislation contained in that report, and that the consideration of those bills be made a special order of the Association immediately after the delivery of the annual address tomorrow morning.

A DELEGATE: You might include the recommendations of Judge Hodges, too.

MR. W. D. WILLIAMS: I quite agree with the gentleman from El Paso, that we are in no condition this afternoon to vote upon the affirmative propositions for relief from conditions that have grown, notwithstanding the protest of my friend from Corsicana, to be intolerable, even to us who have practiced law all of our lives. These outside political preachers, these outside political newspapers, these laymen, do but reflect that profound distrust which this body feels under present conditions, and which I see evidenced here before me today by every speaker who has addressed us. What else does it mean when we are told that of right a litigant must have not only a trial in a nisi prius court, where the law surrounds him with every circumstance that it

can to aid him in the establishment of the truth and the administration of justice, but that he must also have an appeal of any character, and then a second appeal? Then why not a third appeal, and why not a fourth, for if there may be favorites, as my friend from Corsicana suggests, in the one court, there may be favorites also in another. I have not found the favorites myself. In no court in which I have ever practiced in Texas have I ever met with anything but the kindest and best of treatment (applause), and every assistance has been given to me on the part of the judges in arriving at justice in the case that I was trying. They did not always arrive at it so as to suit me exactly, but perhaps I was wrong. Perhaps I was wrong even in those cases in which I felt myself right and felt most deeply wronged because of the judgment, for surely, when an impartial man, or three impartial men hear my argument and hear my facts, and hear the evidences and the arguments presented against me, and without prejudice against me or bias in my favor administer the law as between me and my adversary, in all humility I must confess that more probably are they right than I, and that even when I am entirely unable to agree with them, as I have frequently been.

MR. WHARTON: Mr. Williams, what do you think about two appeals?

MR. WILLIAMS: I think there ought never to be two appeals on any subject.

MR. WHARTON: Are you in favor of having a number of intermediate Courts of Appeal?

MR. WILLIAMS: I am getting into details which I had not thought to discuss this evening. I believe myself, however, that the intermediate courts are an absolute necessity, and that above them must be a supreme authority, which shall not hear appeals in any true sense whatever, but which shall do no more than sit there simply to co-ordinate the law, to see that there is harmony between the courts of the State, and to keep them in line one with the other. When they have done that I do not assume that they are better judges or better lawyers or

more patriotic or honorable citizens than those whom they have overruled, but they are a necessity. I second Mr. Burges' motion.

JUDGE J. C. TOWNES: I would like to ask that emphasis be given to that portion of the motion of the gentleman from El Paso that asks for the printing of the suggestion by Judge Hodges as to one Supreme Court and one court of original jurisdiction, and I would like to ask that Judge Hodges be given an opportunity to supervise the presentation of that much of his report, or his paper. I want to be sure that that comes before this body for consideration tomorrow, whether we shall have the one court of original jurisdiction, with the one Appellate Court sitting in sections, and I was afraid that would not come in response to the motion.

MR. BURGESS: I want his address printed in full, and Judge Speer's bill in full, and Mr. Bryan's and Mr. McKnight's recommendations in full, so that we may know exactly what we are talking about when we go into the discussion tomorrow. The Secretary will understand that covers everything of that nature.

MR. WREN: I just want to suggest that Judge Hodges' paper and the discussions therein were with reference to the amendment of the Constitution so as to give one court of original jurisdiction and one Appellate Court. It will be impossible for anything to be done with that before 1913, and we ought not to go on record at this time, in all probability, as to adopting a plan of that kind. I just made that as a suggestion. We ought to have the benefit of a discussion of the other.

MR. MORROW: I agree with these gentlemen that there ought to be some publication of this, so that we can understand what is before the body, and I believe that some of the members of this committee ought to confer with the Secretary, so that they will thrash this thing out and get it down to just what the propositions are. This report—I have one in my hand—says that Judge Wilkinson recommends one thing, and somebody else another. If we all know just what is before us I think it will facilitate matters, and I suggest that a member of each of

these committees co-operate with the Secretary and get it in proper shape.

MR. BRYAN: I think also Mr. Greer's recommendation should be printed. Personally I very heartily agree with Mr. Greer's suggestion; and I think every one here does.

MR. GREER: I do not think it is necessary for my report to be printed. It is simply a proposition to increase salaries and enlarge the Supreme Court. But these other reports can not be comprehended unless they are printed.

THE PRESIDENT: There being no objection the Secretary will look after the printing. If there is to be no further discussion of the papers we will proceed with the regular order of business. We might have some of these reports that were deferred this morning.

MR. SANER: I have a report of the board of directors with a list of new members that I would like to present now, and I move that the Secretary be instructed to cast the vote of the Association for these gentlemen.

The report was read and the motion unanimously adopted. The report is as follows:

WACO, TEXAS, JULY 4, 1911.

Hon. Hiram Glass, President Texas Bar Association.

DEAR SIR: The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association, and the Board of Directors having fully considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

John Davis	Dallas
A. J. Harper	Mexia (Austin)
J. C. Hutcheson, Jr.	Houston
R. T. Lipscomb	Bonham
John C. Saner	Dallas
John L. Terrell	Dallas (Austin)
Lucian W. Parrish	Henrietta
Leslie Humphrey	Henrietta
E. M. Mann	Mart
A. C. Prendergast	Waco (Austin)

Geo. H. Carter.....	Marlin
Thos. G. Binkley.....	Temple
N. P. Woodward.....	Temple
John Watson	Cameron
M. G. Cox.....	Cameron
W. M. Odell.....	Cleburne
D. T. Garth.....	Teague
Hampson Gary	Tyler
Joe A. Worsham.....	Dallas
Roland H. Stokey.....	Dallas
J. C. Roberts.....	Dallas
L. L. Bowman.....	Greenville
John H. Sharp.....	Ennis
Pierce B. Ward.....	Cleburne
Earl Wharton	Houston
Tarlton Morrow.....	Hillsboro
T. R. James, Jr.....	Fort Worth
T. C. Hutchings.....	Mt. Pleasant
J. G. Wren.....	Waco
J. W. Taylor.....	Waco
F. M. Maxwell.....	Waco
J. R. Webb.....	Waco
E. B. Baker.....	Waco
J. D. Williamson.....	Waco
O. L. Stribling.....	Waco
W. G. Weaver.....	Waco
W. M. Sleeper.....	Waco
B. G. Kendall.....	Waco
Jno. W. Davis.....	Waco
Llewellyn Aubrey.....	Waco
J. Walter Cocke.....	Waco
Frank T. West.....	Waco
E. M. Ewing.....	Waco
J. D. Willis.....	Waco
T. L. McCullough.....	Waco

Respectfully submitted,

R. E. L. SANER, Acting Chairman,
ALLAN D. SANFORD,
W. T. BARTHOLOMEW,
MARSHALL SPOONTS,

Board of Directors.

THE PRESIDENT: The next regular order of business is a paper, "A Sketch of John Marshall," by Hon. Ben G. Kendall.

Mr. Kendall read his paper before the Association, which was very much enjoyed by all present.

(Mr. Kendall informs the stenographer that he had only one copy of this paper, which he took home to revise for publication, and that it has been lost and he is unable to replace same.)

THE PRESIDENT: We will next have the report of the Committee on Legal Education and Admission to the Bar, by Judge Townes, of Austin.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION
TO THE BAR.

To the Hon. Hiram Glass, President of the Texas Bar Association:

Your Committee on Legal Education and Admission to the Bar begs leave to report as follows:

1. There is a gratifying advance in legal education throughout the United States. This is evidenced, first, by an increase in the number of law schools; second, by the raising of the standards of admission into the large majority of these schools; third, by the extension of the courses of these schools, a very large percentage of them now requiring three years' study before graduation; fourth, by the improved methods of instruction and of supervision of the work of the students done in these schools.

This advance is almost absolutely necessary in order to keep up with the general advance in intelligence, information, and business methods. There are now so many good law schools and such a large number of men are receiving training in these schools and these men are becoming so widely scattered throughout the United States, thus affording such formidable competition to young men entering the bar, that the chances for success of the untrained men are now so poor that both wisdom and prudence dictate that they should not undertake to open a law office until they have qualified themselves reasonably well for the task that lies before them.

It is difficult for some of us older lawyers, who came to the bar at a time when the great majority of us had received but little antecedent training, and hence were competing principally with men of our own type, to realize the disadvantages of the untrained man who enters the bar at this time. The majority of the younger men see the situation more clearly, and the prospective student and would-be lawyer who does not appreciate conditions as they now exist ought to have his vision cleared and enlarged until he does take in the supreme difficulty of becoming a leader in his profession, except after the most arduous and thorough preparation. It is a mistaken kindness to advise or aid a man to go into a life work for which he is not qualified, and in which his chances of success are unduly limited. The true friend of a pro-

pective lawyer should faithfully advise him of conditions as they now are, and urge him either to prepare himself properly to meet these conditions or else to abandon the idea of becoming a lawyer.

Coming from a general consideration of the subject to the questions presented to the law student by conditions as they exist in Texas, we find that these do not present any exception to the general facts as stated above. Leaving out of account for the present the work being done by our State University, we find that numbers of men with both collegiate and law training in other schools are coming into our State and entering the practice. These of themselves are a formidable band of competitors. Many of them have had the best advantages of the best schools of the world. Many of them are men of fine intellectual capacity. It takes them but a short while to adapt themselves to conditions here, and they easily outstrip the crude young fellow who has obtained his license almost by the courtesy of the examining board without preliminary training either in academic studies or in law.

When we add to the competition coming in from other States the graduates of our own University and those who have obtained substantial aid in their academic and legal studies in that institution without completing the courses, we find the untrained man is almost without hope of real success at the bar.

Your committee does not mean that there are not many fine lawyers at the bar who had no law school training, a large number who had not even a fair common school education before coming to the Bar, but it insists that these men would have been better, more thoroughly rounded and more successful lawyers if the advantages denied them had been open to them, and that with the advantages, their success would have been more pronounced even than it is now. Again, in considering this matter we must not lose sight of the fact that men of this type constituted a majority of the lawyers in the community in which these successful men have prospered, whereas now the large majority of men coming to the practice are better trained both in their academic and legal studies. It seems to your committee that it is highly important that this Association should give its influence and prestige to the cause of higher professional education.

The report of the committee on this subject last year presented with fair accuracy the conditions in the Law Department of the University of Texas. The last session made no material change in these conditions. The number of students matriculated in the Law Department was 321. Seventy-six out of the senior class graduated and received license. These seventy-six were the survivors of a junior class of about 220. Many of those who did not graduate were forced to discontinue their studies in the department for the lack of means. A number dropped out on account of lack of preparation, ability or application, or of all of these. The endeavor of the Law Department is to make its work

thorough and to eliminate from the school those who are not faithful and conscientious in the discharge of their duty.

The work done by the department in the teaching of substantive law is quite satisfactory. It has been impracticable to teach procedure with anything like thoroughness without an increase in the faculty. This is the principal defect in the department so far as its undergraduate work is concerned. We earnestly hope that in the near future the faculty may be increased so that at least one professor can give all of his time to the practical side of the work and that our young men upon leaving the department will be better equipped for conducting or aiding in the conduct of a law office than they are at this time. When this expectation can be realized depends, of course, upon the provision made for the department in the future.

For a long time it has been the proud boast of Texans that with her extensive territory and exhaustless resources our State would soon become one of the leading States in the American Union. The time for the realization of these hopes is close at hand. Texas is now the fifth State in population. In two more decades in all probability she will have advanced to the second or third place. In the nature of things the proportion of our rural population to the population of our cities will be greater than that of any other controlling State in the Union. Congested centers of population, such as New York, Chicago, San Francisco and other large cities, are not probable within our borders, while our vast extent of tillable lands and their wonderful productiveness will support and demand almost untold increase in our rural citizenship.

If history teaches us anything, it is that the danger to political institutions comes from congested masses of men thrown together under conditions which from their earliest infancy tend to develop selfishness and cunning and the undue advancement of self-interest. The conserving elements are always found in the most sparsely settled districts where man can develop with broader views, with less pressing and controlling competition and with greater regard for his fellow. History will not reverse herself on this proposition. Before many more decades roll around, Texas, if she is to meet her destiny, must be prepared to measure up to her opportunities as a conservator of the common weal, not only within our own borders, but throughout the United States, and even beyond those throughout the world.

The men who are to meet these responsibilities and bear these burdens are now in their youth or early manhood. A large proportion of them are now in the schools of the State, and most of them are now, or in the near future will be, in the Law Department of your State University. It is no mean task to meet these men day by day and train them for their life service. It is a responsibility which should not be put upon a man who can not realize something of its tremendous weight and yet so heavy that it needs oppress him, who can appreciate it and who undertakes in good faith to bear his share of the burden.

At this time this tremendous responsibility rests largely upon five men whose strength does not permit them to do more than present good, thorough instruction in the rules and principles of the substantive law to the undergraduate classes.

Some provisions should be made by which advanced courses in law could be given to such number of students as can continue their studies during the fourth year. This work ought not to be required for a graduation or for entering into the practice. It should be offered, in a post-graduate course, to those whose zeal for broader views and more thorough acquaintance with the fundamental principles of our institution and laws induce them to spend this fourth year in research and study in such subjects as tend to fit them for service for the State and nation. The course of study should include, among others, such topics as general jurisprudence, comparative law, Roman law, comparative governmental institutions and international law. In the near future, when the demand is made upon Texas for the highest types of manhood and the largest efficiency in her sons, she should be able to answer the call with the names of a reasonable number, and this she can not do unless among her sons there are some who have enjoyed advantages equal to the best. Texas, with her wealth and resources, ought to be too proud to force her sons to go to other States and other schools to obtain the equipment that shall ultimately redound to her advantage and credit.

The proceedings of the last meeting of this Association show that upon the coming in of the report on Legal Education and Admission to the Bar, the Association voted unanimously in favor of the amendment of the law regulating examinations of applicants for license to practice law so as to provide for the appointment of one board by the Supreme Court of the State, with jurisdiction over all examinations given in this State. The expression of unanimity of sentiment by the members of the Association on this question was the extent of the action at that meeting. Your present committee suggests that the President of the Association appoint a committee of five members, who, in conjunction with him, shall carefully consider the laws regulating examinations and admission to the bar in other States of the Union, and prepare a bill on this subject, providing for one committee to be appointed by the Supreme Court and such other provisions as in their judgment may be desirable, and to present the same to the next regular session of the Legislature, and use its influence to secure its passage.

It will be remembered by the older members of the Association that the change from the old method of examination in the District Court to the present method was largely due to the influence and persistent effort of this body. That was a great step in the right direction. The only objection is that the step was not long enough, and we should now go forward and substitute for our present reasonably good method one still better. Your committee respectfully recommends the action above

indicated and that each member of the Association use his personal endeavor to secure the passage of the bill.

Respectfully submitted,

JOHN C. TOWNES, Chairman.

THE PRESIDENT: Gentlemen of the Association, what will you do with the report of the committee?

MR. BALLEW: I move the adoption of the report.

JUDGE B. H. RICE: I second the motion.

The motion was unanimously adopted.

THE PRESIDENT: The next regular order of business is the report of the Committee on Commercial Law. I understand the report has been sent in, signed by maybe all the members, but none of the members are here. It has been sent in with the request that I ask somebody to read the report, and I ask Mr. Estes to read it.

REPORT OF COMMITTEE ON COMMERCIAL LAW.

WACO, TEXAS, July 5, 1911.

To the President and Members of the Texas Bar Association:

Your Committee on Commercial Law, as now constituted, is impressed with the importance of the matters presented by the preceding committee, at the last meeting of this Association; it believes that definite action should be taken upon that report and it feels that it can best discharge its duties by calling the attention of the Association once more to that report rather than by making recommendations upon new matters, thereby leaving the important question of uniformity of State laws to be dropped and forgotten. This question should be continually presented and agitated until some definite results are obtained. This Association can scarcely render more beneficial service to the people and to the bar of this State upon any matter than upon this.

The subject is peculiarly one in which this Association should take the initiative, and if it can claim the credit of securing the adoption in this State of laws uniform as nearly as practicable with the laws of other States, it will on this account alone have justified its existence. The movement to secure uniformity in State laws seems to have been ignored in this State, although its value and importance are apparent at a glance, and have been recognized by a great majority of the other States. Already we have waited too long, and it is now time to assume an active initiative and secure to this State the passage of those laws which mean much to its commercial and industrial interests, as well as to its bar. For in behalf of such interests is this report made as well as in the behalf of the members of this Association whose constantly recurring experiences teach them that they must confess almost total

ignorance of the laws of other States and recommend their clients to other attorneys, even upon trivial matters, or else undertake the practically impossible task of mastering the conflicting laws of a great number of States, thereby undertaking interminable labors and unlimited library expense. This means much to the local client desiring information of the laws of other States upon questions of commercial law. It would also mean much to the State for foreign capital to know that in this State they are to be governed by practically the same laws as in their home States. In the report of the preceding committee, the uniform laws of negotiable instruments, of bills of lading, of warehouse receipts, and of the sales of goods, were commended to the Association. Those of partnership and divorce might well have been included, and there are yet others, but those named are sufficient to engage the attention of the Association for a time, at least. The scope of any one of the laws named is so broad as, no doubt, will preclude a detailed consideration of its provisions by this Association as a body, at least in the absence of a report by a committee which has made a thorough study and investigation of each of the acts. The matter must, therefore, of necessity be referred to a committee, which should thoroughly digest the provisions of each of the acts, with a view to ascertaining whether the same are applicable to the conditions existing in this State, and then carefully investigate the success of each of the laws in the States in which the same have been adopted.

For this purpose we recommend that a committee of three be appointed to make the study and investigation suggested, and report back to this Association at their next meeting, upon the desirability of endeavoring to secure the adoption in this State of one or more of all such acts, or else that the succeeding committee upon this subject be instructed to make such report.

We also renew the recommendation of the preceding committee, that we endeavor to secure the passage of an act recognizing the Commission of Uniform State Laws, and creating a similar Board of Commissioners in this State, to meet annually with the Conference, and providing for the payment of their actual emergency expenses in the discharge of their duties and for the participation of this State in the general expenses of the Conference, and we recommend that if a committee be appointed in line with the preceding paragraph of this report, such committee be authorized and instructed to draft a bill for this purpose, and endeavor to secure its passage.

At the last meeting of this Association there was some discussion over the Bills of Lading Act. Since that time the subject has received the attention of practically all of our law-making bodies. Our State Legislature has passed the act of September 13, 1910, the provisions of which it seems should be effective; and, as directed by the act, the State Railroad Commission has provided forms for the authentication, validation and certification of bills of lading. Several bills have been introduced in Congress, but none have been passed by that body. A

bill, introduced by Mr. Stephens of Minnesota, is now pending, and has been referred to the Committee on Interstate and Foreign Commerce. The railroads and shippers have undertaken voluntarily to arrive at a satisfactory solution for the protection of all parties interested, and an agreement has been reached which has already been accepted by a number of railroads, and will, no doubt, be accepted by a great many more.

This agreement was formulated, as we understand, by the representatives of a number of railroads in conference with the Cotton Bills of Lading Conference Committee, Liverpool, and the Bills of Lading Committee of the American Bankers' Association. In conformity with the provisions of that agreement, the Interstate Commerce Commission has issued instructions to the railway companies, substantially in the wording of Section 1 of that agreement. For the information of those who might desire to know the contents of the several matters, we have attached to this report copies of same, but have not made such copies a part of the report, because it would make it too voluminous. The time has perhaps as yet been too short to tell with what success the different efforts will meet, but they seem to meet the approval of both carrier and shipper, and we have every reason to expect all that is desired.

Respectfully submitted,

H. W. HEAD, Chairman,
H. M. GARWOOD,
HENRY C. COKE,
H. C. CARTER,
T. W. GREGORY,
Committee.

MR. KELLEY: Mr. President and Gentlemen—I was chairman of the committee that prepared the preceding report that is referred to in this report. I want to move the adoption of this report, because, in my opinion, it is one of the most valuable suggestions that has yet been made to this Association. This is the thirtieth meeting of the Texas Bar Association, and I presume the Constitution was adopted some time about the time of the organization, and that Constitution provided for this Committee on Commercial Law, and it provided that its duties should be to recommend uniform laws, or the best methods of securing uniform commercial laws and usages. It seems that the men who were in this organization at its inception realized the importance of this subject, yet, strange to say, this is the third time, so far as I have been able to find, that this committee has ever made a report. The first report was made at Fort Worth in 1908; the second report was the one made last year at San Angelo; and

we have now the third report today. One of the ~~suggestions~~ made at Fort Worth and renewed in the report a year ago and renewed again today, is that the State, through her Legislature, recognize the Commission on Uniform State Laws, ~~which meets~~ a few days prior to and at the same place with the American Bar Association. It is true that Texas has been represented in that Commission by individuals, who, to a certain extent, volunteer their services—or, at least, they volunteer their expenses.

THE PRESIDENT: They are appointed by the Governor and they pay their own expenses.

MR. KELLY: Yes. It occurred to the members of the committee a year ago, and I presume to the committee this year—Mr. Head was a member of the committee a year ago—that if there was some legislation on that subject, that if Texas would follow the lead of other States, it would be a move of great benefit. A great many States have passed laws authorizing the Governor to appoint members of the Bar Association to attend the sessions of this Conference and to make their report to the Legislature, and I think such a law in this State would be productive of good results. At the Fort Worth meeting a resolution was adopted—I forget just the wording of the resolution, but it was to the effect that we ask the Legislature to pass such a law in Texas, and I think the same resolution should be incorporated in this report today. At least, gentlemen, I think we ought to urge upon our Legislature to pass that law. As stated in this report, quite a number of bills have been recommended by the Commission and have been adopted in a great many of the States. One—the negotiable instruments bill—is now in force in all but eight of the States. I believe the President's report this morning mentioned that fact. Yet Texas has done nothing so far. I think that is a question on which we should all put our shoulders to the wheel and try to get something done. I move the adoption of the report.

The motion was seconded and unanimously adopted.

THE PRESIDENT: The next order of business is the report of the Committee on Criminal Law. The report is here and Mr. W. A. Wright of San Angelo will present the report.

MR. WRIGHT: The report of your Criminal Committee is signed by Rudolph Kleberg as chairman. In it he states that

because of press of business no other member of the committee has given him any aid or joined with him in the report. For myself, I deny the stress of professional business, but a constitutional inhibition that I have prescribed for myself, requiring me not to do anything until I have to do it, has kept me from giving Judge Kleberg my very valuable aid. I, however, endorse this report and every word in the report.

REPORT OF COMMITTEE ON CRIMINAL LAW.

Hon. Hiram Glass, President of the Texas Bar Association:

The chairman of your Committee on Criminal Law begs leave to make the following report:

Immediately upon receipt of your letter of the 15th of May last urging a report from this committee, I addressed a letter to each member of the committee, with the view of getting the opinion of each, but owing, no doubt, to press of professional engagements, these gentlemen have not been able to render me any assistance in making up the committee's report. Therefore, I can only submit my individual views.

At the outset, I might state that the Penal Code and Code of Criminal Procedure, as provided by the Act of March 19, 1909, have been revised and annotated by the Commission of Codifiers, composed of Hon. James G. Dudley of Paris, Hon. R. B. Minor of San Antonio, and Hon. H. G. Robertson of Beaumont, and were passed by the Thirty-second Legislature, and are now in the hands of the printer, and will be ready for use by the profession on the first of September of this year.

These Codes, I understand, in no way undertake a change of the criminal laws, but simply re-arrange them under their appropriate titles, chapters and articles and provide them with marginal references and chapter head lines, similar to those in the present Revised Statutes, and with the annotations of the decisions of the Court of Criminal Appeals up to a recent date. The work of the codifiers, as far as I have been able to learn, has been well done, and will, no doubt, be of great service to the Bench and Bar of Texas, and conduce to the better administration of the criminal law.

Nothing serves better to show that our criminal law is a growth, like every other branch of the law, than these annotated codes. When they were first adopted in 1856 our courts had to proceed upon untrodden paths and blaze the way for coming generations by intelligent judicial construction. Slowly but surely our people have emerged from primitive crudities to a simpler and more enlightened administration of justice. Pleading, evidence and practice in criminal cases have been reduced to a simple and plain, yet scientific basis, so that he who runs may read. Not only is the legal profession better able to understand the administration of the criminal law, but the citizen is constantly

kept in intelligent touch with it by reason of our jury system, so that it has become a part and parcel of our character as a people of freemen.

And yet, in these times of unrest and reform, there has arisen, somehow and somewhere, a wide dissatisfaction with the administration of our criminal law. Let us realize at once that much of this dissatisfaction is empty clamor and is based upon the fallacious idea that the administration of justice is so hemmed in by technicalities that it usually results in the miscarriage of justice. Nothing is further from the truth. The fact is that one accused of crime in Texas must usually submit to a fair but vigorous prosecution, no matter what his standing may be in the community, and that when he escapes conviction, it is not on account of technicalities, but because he is rightfully acquitted, or on account of public sentiment, and sometimes, not often, on account of perjured testimony. He can not rely on the delays of the law, since his application for continuance is now addressed to the sound discretion of the trial court. He can not often quash the indictment, since these follow approved precedents, and even in the case of a quashal of the indictment, a new one may be filed. It is a mere accident if he escapes conviction on this line. He can not stock the jury, as it is made almost impossible under the present jury law and change of venue law to do so. All he may possibly hope to do is to hang the jury; and if the venue is then changed on him, he is tried by a jury of strangers in a strange county. He can not get out on a charge of the trial court, unless the district judge commits error, or by accident falls to charge the law; and even then, he can not escape unless he can show in the appellate court that the acts of omission or commission by the trial court in submitting his charge to the jury injured the legal rights of the defendant, and that he has raised this point at the proper time. He can not escape conviction even on account of the admission or rejection of testimony, unless he has reserved the point by written bill of exceptions, approved by the court, and not then unless he can show that this was calculated to injure his legal rights. And lastly, when he succeeds in reversing the judgment of conviction, he can be tried again without delay.

Of course, there are miscarriages of justice, but they are rare, and generally result not from technicalities in the law, but from a spirit of mob law, which overrides the law and impedes the due administration of justice. This mob law is not always on the side of the accused, but sometimes on the side of the State. But wherever it is and from whatever source it comes, it is the chief cause for the miscarriage of justice. The only direct and effectual way to stop mob law is by a fearless and upright trial judge who is courageous enough to change the venue when he sees that a trial alike fair to the State and defendant can not be had in the county where the prosecution is pending, and who rules according to the law during a trial. It is not a question of the technicalities of the law; it is not a question of criminal procedure; it is a question of judicial backbone that usually fells mob law and pre-

vents the miscarriage of justice. That, as a rule, our district judges possess this quality I have no reason to doubt. If any do not, the people who elect them are responsible.

It must be evident, however, that the farther the judiciary is removed from the subtle influences of public clamor and politics the more independent it would be; that while the times may not be ripe to even consider an appointive judiciary, the question of longer terms and better salaries of all our judges, both trial and appellate, is a matter of urgent necessity. While our bench, upon the whole, has been singularly free of any taint of corruption or judicial cowardice, it is just possible that we are drifting near the danger point of a too liberal breadth of popular selection of our judges, and that a more careful method of appointment or election might well be considered. The idea, often expressed by thoughtful lawyers, of appointing our trial judges by the courts of last resort for life or a long term is well worthy of serious consideration. These courts are acquainted from personal contact with the best lawyers in the State, and their selection of the district judges would be free from all political influences and would have the effect of winnowing out from the members of the bar the strongest and best men, if adequate salaries were paid. The fact that we have been singularly fortunate in the selection of district judges, and that they have been willing to serve for a comparatively small salary, is no reason why their selection should not be more carefully made, and their salaries raised to a sum which is adequate not only to meet the high cost of living, but to render them independent financially in the discharge of the high duties which they have to perform.

Again, there is a morbid spirit abroad in the land that clamors for conviction in every case (except when the person who raises the clamor is himself accused), and which ignores the fact that an acquittal is not necessarily a miscarriage of justice. It must be borne in mind, that the law is a shield for the innocent, as well as a sword turned upon the guilty, and that it is better that ninety and nine guilty persons escape than that one innocent one be punished.

I can not join in the opinion entertained by some that the trial judges are mere automatons and umpires, and should have more power than at present. I believe they have quite enough power: it is possible they have too much in the approval of bills of exception, as it is difficult, if not impossible, for a defendant to get a bill of exceptions by bystanders, and when the defendant accepts a bill as qualified by the judge, there is oftentimes very little to review by the appellate courts. That this does not necessarily result from an abuse of power may be admitted, as it results chiefly from the fact that after objections are raised the bills are not signed up by the judge until days and weeks, probably months, after the objection has been raised, and that it is frequently difficult on account of the lapse of time to agree upon a bill of exceptions such as the facts at the time of the objection justified. The suggestion of making haste slowly may be well considered at

this point, and that it would probably result in the better administration of justice to note, by the court stenographer, the exceptions immediately as they arise and when fresh in the mind of the court and counsel, and to embody them in the statement of facts or transcript.

It is urged again that the trial courts might be given power, as under the Federal practice, to sum up the evidence and submit such issues of facts as the judge may deem proper. But such practice would trench dangerously near the province of the jury to try all questions of fact, and would virtually emasculate trial by jury. However, a better practice would be for the court to prepare his charge as soon as the evidence is closed, submit the same to counsel to prepare exceptions thereto within a reasonable time, and not permit him to urge any other exceptions in his motion for new trial.

Reference is made to England, and that but comparatively few reversals occur in that country. England existed as a stable government over one thousand years before the United States was born. It is an old, well-regulated, constitutional monarchy, and pays its judges higher salaries than any country in the world. It deservedly merits high credit for being the cradle and home of constitutional law and the mother of the great common law; yet its administration of the criminal law is not what the United States or Texas should model after. Ours is a republic of freemen, whose laws are made and administered by freemen, and we can not hope to realize the high ideals of a republican form of government if we model our institutions or our administration of the laws after a constitutional monarchy. That the laws are better executed in a constitutional monarchy than in a republic is a historical fact, but it is likewise a historical fact that more personal and civil liberty is enjoyed in a republic and that freemen prefer the latter.

But after all has been said, and in the last analysis, our own people are responsible for the administration of the criminal law. The old adage that the stream can not rise above its source is especially true in the subject at hand. Every government of republican form, of course, is a creature of the people, and is no better or worse than the people who support it. They are the sole power that makes and repeals the laws, and they are responsible for the legislators who legislate and the subjects they legislate upon. This is a truth so trite that it can not be gainsaid without acknowledging the fact that the people are not able to govern themselves, which no self-respecting citizen will admit. It may be further stated as a postulate that whatever the people want in the way of legislation they obtain sooner or later. Now, it may be stated that at present, as in the past, the people desire generally a reform in the administration of the criminal law, as well as some specific legislative reform in this behalf, but they are not yet agreed as to the manner of obtaining this reform. Various reforms of procedure and practice have been suggested, with more or less approval by the people, as well as the legal profession; besides, schemes of reform are constantly presented to the Legislature, and some are enacted into law with more or

less desirable results. It must ever be borne in mind that our laws are a growth and have been from the time Texas became an organized commonwealth, and will continue to be so in the future. Great changes have in fact taken place gradually in the laws themselves, as well as in our entire judicature, so that the administration of justice has kept pace with public sentiment and the enlightened conscience of our people. Yet, in spite of all this, lawlessness and mob law continue to exist. This is partly due to our rapid growth in population; partly to economic and social conditions, and largely to the frontier habit of indiscriminately carrying deadly weapons. But the cause of complaint lies deeper than any simple reform in our criminal law and its administration. What is needed more than anything else is a reform in public sentiment. Useful reforms in procedure can and will continue to be made, but will they really strike at the root of the evil of which we complain? Let us be frank and admit that they will not. In the first place, let us admit that the administration of our criminal laws and the laws themselves are not as bad as they are popularly believed to be. In the face of public clamor, I maintain that our Penal Code and Code of Criminal Procedure will compare favorably with the best in any civilized country, and that they are reasonably well administered in punishing the guilty and protecting the innocent. The truth is, that much of the proposed reform will do more harm than good, and create confusion and just complaint if it were law. If we will but acquaint ourselves with the true facts, we shall find that courts and juries generally do their duty and enforce the law, although at times there is a miscarriage of justice. There does not exist that deplorable miscarriage of justice of which we hear and read so much about, and which is frequently but the creature of ill-conceived reform as well as the hasty conclusion of ill-informed minds. Courts of justice can not and should not be run as grist mills. Hasty justice is tyranny and but another species of mob law. Not that I contend that we have reached perfection, nor would I inveigh against well considered and needed reforms in the administration of our criminal law, but I want to enter protest against the morbid sentiment and the hue and cry that the administration of our criminal laws is a farce and responsible mainly for lawlessness and mob law. I desire to emphasize the fact that it is the unwarranted contempt for our laws and the courts which is principally responsible for the evil. The senseless clamor against lawyers, courts and juries is largely responsible for the mob law spirit; and mob law in turn produces this contempt. What right have we, as freemen, to lay all the blame upon courts, lawyers and juries, for the mal-administration of the criminal law, and ascribe lawlessness and mob law to them? If these are the only causes we may so amend our procedure that they will cease to be the cause, and if we do not, the fault is ours. But the truth is, that, as a rule, they are not the causes—the cause lies deeper and is mainly found in the popular fallacy that persons accused of crime must be tried under the public clamor of the hour and not under the orderly rules of

law. If we but uphold the strong arm of the law, whenever it is raised to enforce the law; if we would frown down the mob spirit wherever it raises its hydra head; if we would sedulously and on all occasions, and especially among the growing young men, instill in the public mind and preach the doctrine that this is a government of laws and not of men, we should go far in restoring respect for the courts and the law, and thus build up a public sentiment behind the law which would enforce it, and without which it can not be enforced under the most perfect criminal codes upon earth. It is the mob spirit, which desires to take the law in its own hand, that lies at the root of the evil. Banish that, and the stream of justice will flow on resistlessly in its course, and then, and not until then, just legal reforms may be safely constructed along its borders.

Based upon the above views, I respectfully submit the following suggestions for the consideration of the members of the Texas Bar Association:

1. Longer terms and higher salaries for all the judges, both trial and appellate.
2. An immediate record of all exceptions, and reasons therefor, to be made by the court stenographer, together with the court's ruling and qualifications, and a copy to be embraced, as taken down, in the statement of facts or transcript.
3. As soon as the testimony in a criminal trial is closed the court shall prepare his charge and submit same to counsel for defendant, who shall have a reasonable time to request special instructions and raise exceptions, and no other shall be considered in his motion for new trial.

Respectfully submitted,

RUDOLPH KLEBERG,

Chairman Committee on Criminal Law.

As one member of your Committee on Criminal Law, I endorse every word of Judge Kleberg's report.

W. A. WRIGHT.

MR. WRIGHT: Gentlemen, no man can deny the fact that there has grown up in Texas a sentiment somewhat akin to contempt for the courts and their enforcement of its criminal law. That spirit goes to the extent of wanting to try men, not by the orderly procedure of the courts, but by public sentiment itself, and it wants to invest its trial judges with the power of a Turkish *cadi* or a Mexican *jefe politico*, and he be governed by their sentiment and their opinions, made largely from the rumor and the clamor that occurs in every county immediately after the commission of an alleged crime. My judgment is that this sentiment did

not naturally grow from the people themselves; that there has been nothing in the administration of the law that ought to have caused or created it, but it was driven into them largely by the great dailies of this State, who, without being lawyers themselves, have assumed to pass upon every matter of criminal procedure, have disseminated false ideas of what that procedure is among the people, have talked of the law's delay when there has been nothing but an orderly and proper delay, when the courts have refused to listen to the howl of the mob to try a man in the county where a homicide has occurred, in view of the frenzied and excited condition of the people. By these means this sentiment has grown up in Texas. The same human nature that is in the people now was here in the formation of this Republic. That same cry against crime, when one was alleged to have been committed in the county, was here then, and that the clamor against the courts was not here then that is here now, in my humble judgment, is largely due to the lawyers of this State. In the day when we were building a nation, when the lawyers were nation builders, before the advent of the big cities, the great lawyers of your State practiced at the criminal law as well as the civil. They had behind them character and standing and the trust and love of the people, and when these howls began to come up they explained to their friends and clients why this thing was right and the other wrong, and it stopped the clamor against the courts. The people understood, and the people can and will understand when they are taught by people who know. But you must not leave their teaching to the Dallas News. If they are to be taught, the lawyer who knows the law must teach them, and nobody else can do it. In these days the best of your city lawyers rarely practices at the criminal law. Only we country men do that. You have a kind of a sneer at criminal law and criminal lawyers. Can it be that some of you help on this public clamor by that sneer and by your own ignorance of that which you ought not to be ignorant of, because every lawyer ought to know something of criminal law, and he can not see the great tree of law and just look at the limb of commercial law or corporation law to gain a broad generalization of the law and be a great lawyer. He must see the whole tree, and he has got to quit sneering at the enforcement of the criminal law unless he knows what that law is.

Another thing—In nine cases out of ten the people clamor at the least delay in the administration of the criminal law. It is this very clamor which reaches the bench and which reaches the jury and prevents the man charged with crime from getting the trial that the law prescribes. Thus you find a people that want a man tried right now and you must not delay it one day. That clamor is, "We want to try him today. We want to convict him," as I had a jurymen once tell me, when I was questioning him on his voir dire: "Yes, sir; I can give him a fair trial. I can hang him, and that is what ought to be done." (Laughter.) That sentiment largely prevails among the people, and that more than anything else causes reversals in your criminal courts, because the man has not had the trial that law and common justice demands that he shall have. That is more largely the cause than any other.

I was somewhat surprised this morning at Judge Hodges' statement, that a larger discretion ought to be given a judge in refusing a continuance in both civil and criminal cases. Why, how can you give him more discretion than he has now? No man charged with crime has a right to a continuance as a matter of law in Texas. It is left to the sound discretion of the judge, with the only limitation that if a motion for a continuance is overruled and after conviction it is found that the testimony for which the continuance was sought is material, and the facts stated in the application are probably true, he shall have a new trial. Does the sentiment of Texas lawyers want to go further than that in the trial of any man? Sentiment has not gone so far in the Southland yet, but that any man here under some circumstances might be forced to take human life. The outrage upon justice would be so great if he was not allowed a continuance for facts that are material and probably true that I do not see how any sane man wants to remedy the law in that respect.

Then another question—In one of these reports here today it is proposed that the law in criminal cases, as well as civil, should be so changed that where the appellate court finds the ends of justice have not been defeated, no reversal shall be had for any error in the admission of evidence or in the charge of the court. Now, to give you a concrete illustration: In the case of the State against Schauer, reported in your Court of Appeals about ten

years ago, the Court of Criminal Appeals held that the trial judge had absolutely taken away from the defendant the God-given right of self-defense in his charge to the jury. The evidence for the defendant showed self-defense. The evidence of the State's witnesses showed a lying in wait. There is your charge. It has taken away the right of the jury to consider the defendant's evidence on self-defense. You go up to your appellate court, without the witnesses before them, without being confronted with them. The rule announced would do what? It would give that court the right to say: "We do not believe the ends of justice have miscarried, and we will affirm this case." It would make that court a trial court on the facts and give to it the power to weigh the evidence from a written statement of facts. A few of our distinguished friends who have grown wise in the practice of the civil law had better look a little longer and a little deeper into the due administration of justice as applied to one of the greatest rights of humanity, the right of a fair trial and an honest trial in a country of free men, when the citizen is tried for his life or for his liberty. (Applause.)

MR. BRYAN: I approve that part of that report which says that at the bottom of this whole thing is public sentiment. The existence of public sentiment ought to make jurors enforce the law. I am a civil lawyer. In fact, I feel somewhat that Mr. Wright's suggestion that the civil lawyers are likely to sneer is pretty well placed. I want to give you a good illustration in a case that occurred in Harris county. Two men had offices across the hall from each other. The deceased, with another man, who was the only witness to the case outside of the defendant, walked out of his office. The defendant was standing across the hall with a pistol in his hand. The decedent was unarmed. The two men ran down the hall. The defendant shot the deceased in the back of the head, killing him, while the deceased was running and while the deceased was unarmed. The defendant's defense was, and that was the argument, so I understood, before the jury, that he thought the deceased was running down the hall so as to turn around at a turn in the hall and shoot him. That was his defense and the jury acquitted him. Now, gentlemen, such an absurdity as that is not brought about by any contempt of law, but the lack of public sentiment in a jury that would hear

any such defense as that and acquit him. I agree with Mr. Wright in that report to that extent, that there ought to be some effort made to arouse public sentiment among jurors to enforce the law, and not be all the time reflecting upon lawyers and the law. (Applause.)

MR. MATHIS: I agree in toto with everything in that report together with the recommendations made, and I move that it be adopted.

JUDGE W. F. RAMSEY: Have we been adopting reports where it was by just one member of the committee?

THE PRESIDENT: That would be entirely with this body.

JUDGE RAMSEY: I believe one recommendation was for longer terms and higher salaries, and there were some other recommendations. It seems to me there is some language in that report and a good deal of literature in it that we might well hesitate to put out with the endorsement of this body. I know Judge Kleberg very well. He was reporter of the court all the time I was on the Court of Criminal Appeals. He is a most excellent lawyer and excellent man. If the suggestions were made to adopt the recommendations, I would have nothing to say, but it seems to me that the report takes pretty strong grounds and I doubt the wisdom of undertaking to adopt all his statements, and I would like to have a division of questions. I usually have not voted on these matters or taken any part in the discussions, or busied myself very much in trying to make the rules, but I can not find myself in agreement with a great many of the statements and complaints of public opinion and views of other people and things of that sort generally in the paper. I do not think, in other words, Mr. Chairman, that our criminal law has arrived at such a state of perfection as to be entitled to any special glorification by an assembly of lawyers in this State. (Applause.) I have stated in writing that our Criminal Code and Code of Criminal Procedure was very much misunderstood and was most frequently complained of by those who understood the least about it. I think for the most part it is a very excellent Code of Criminal Procedure, and yet I think there will be enough wisdom in this body to make improvements on it which time and experience have demonstrated to be needed. I think further, and I share fully the responsibility of Judge Kleberg, that in its administration

the courts have sometimes not pursued as wisely as they might the course that would make that code, both penal and of procedure, the most valuable code for the people of this State.

Now, I hesitate to say this much, for the reason that, as far as I am concerned, I am removed definitely and forever from the Court of Criminal Appeals. I served there three years, and that service is a matter of public history. I am conscious of one thing, Mr. Chairman, that there was never a sentence or a line written while I was on that Court that in any sense bowed to any public opinion, nor did I hesitate to take advanced ground where I thought it was needed for fear that I might be charged with being less regardful than I should of the rights of some criminal, but I do doubt exceedingly the wisdom, and I shall protest against it, of this body's going on record as in effect decrying any sort of criticism, just or unjust, and decrying any sort of amendment and progress, whether needed or not. (Applause.)

MR. JENKINS: If I have properly understood the question heretofore put by the Chair, we have not been endorsing the reports, but the recommendations contained in the reports. I take it, it would be embarrassing for this body to endorse in toto any report of any committee on any subject, and yet it would be embarrassing for this body to reject a report, and I see no reason and no necessity for acting further than that the report be received and placed on file and published with the proceedings of the meeting. Probably the gentleman who made the motion will confine it, as I have understood other motions, that the recommendations of the report be endorsed, and I move an amendment to the motion so that it shall be that the recommendations of the report be endorsed by this body.

MR. WRIGHT: I just want to state that I do not think the gentlemen caught the drift of that report. There is nothing in that report that says the code of Texas was perfect, but on the other hand it says it was a matter of growth and it would still continue to be a matter of growth.

THE PRESIDENT: I do not believe I recall that any motion has been made during this session to adopt a report. We have adopted the recommendations of several reports, but the motion in this case was made by Mr. Matthews to adopt the report and

the recommendations, and, of course, I could only entertain such motions as were made.

MR. MATHIS: I will withdraw the motion as to the report other than the recommendations. Personally, I endorse every word of that report, but there seems to be some misunderstanding about it, and I withdraw that feature of it, and make my motion to conform to the recommendation.

THE PRESIDENT: Judge Jenkins then, I presume, will withdraw his amendment?

JUDGE JENKINS: Certainly.

The motion as made was seconded and unanimously adopted.

On motion of Mr. Bryan, duly seconded, the meeting adjourned until 9 o'clock a. m., July 5, 1911.

JULY 5, 1911--MORNING SESSION.

THE PRESIDENT: Gentlemen—The special order for this morning was the discussion of the papers and reports that were submitted yesterday, and portions of which were ordered printed. Yesterday being a holiday and all the printers being off duty, it was impossible to have the work done by this morning. I am informed by the Secretary that it will not be ready before the noon hour, but we will be pretty sure to have it here by 2 o'clock. I would like to know the pleasure of the Association.

MR. HAWKINS: Mr. Chairman, a resolution.

Mr. William E. Hawkins thereupon presented the following resolution:

"Whereas, The time is ripe for this Association to inaugurate practical action looking to a revision of our judicial system and the practice and procedure of our trial and appellate courts in civil and in criminal cases; and,

"Whereas, The final action of this Association in the premises should reflect the matured judgment of its members and the combined wisdom of the entire Bar of this State and should be such as to commend itself to the Legislature and to the people of Texas; and,

"Whereas, Several papers and reports of committees which have been presented at this meeting embody various suggestions and plans for the accomplishment of the purposes mentioned; and,

"Whereas, The members of this Association have not had opportunity for careful study and consideration of any of said papers, suggestions or plans; now, therefore, be it

"Resolved, First—That all of these matters be and are hereby referred to a special committee of nine, whose duty it shall be to carefully consider the whole subject and report thereon to this Association at its next annual meeting, embodying in such report a draft of a joint resolution for adoption by the Legislature, submitting to a vote of the people such constitutional amendments, if any, as such committee may recommend, and also drafts of such bills as may be necessary to carry into the Revised Statutes such changes, if any, as such committee may recommend.

"Second—That so much of the report of said committee as may relate to constitutional amendments be printed, and a copy thereof mailed by it to each member of this Association, at least thirty days before its next annual meeting.

"Third—That said committee shall be appointed by our president and shall consist of three members of this Association who are not office holders, one member of the law faculty of the University of Texas, one County Judge, one District Judge, one judge of a Court of Civil Appeals, one judge of the Court of Criminal Appeals, and one judge of the Supreme Court.

"Fourth—That said committee is also charged with the duty of cooperating with the Governor and the Legislature in securing prompt relief for our Appellate Courts, in pursuance of any instructions that may be given by this Association.

"Fifth—That the actual expenses of said committee, not exceeding \$500, be paid by the Treasurer of this Association, on certificates of the chairman of said committee."

MR. HAWKINS: I move the adoption of this resolution.

MR. GREER: That is germane to the matter in the hands of the printer, on which the Association is going to be called to act this afternoon, and I think it ought to be all considered together instead of at this time, together with the other matter which will then be before the Association, so that we can act on all that is pertinent to the same subject at one time and advisedly.

MR. HAWKINS: Mr. President—Of course, it is with the house, but my idea is that the whole matter ought to go over until the next meeting, and upon that point I want to be heard. I understand this Association has been in operation for twenty-nine years. I have never had the honor of being a member of either house of the Legislature, but I have had some special opportunities for observing its work, and I think I can say, and I think every member of this Association who knows the facts will say, that the recommendations of this Association have not had the weight to which they were legitimately entitled in the Legisla-

ture of Texas. I take it there is a reason for that fact, and I believe the reason is found in the fact that the recommendations of this body have not reflected in all instances, and I will say in most instances, the deliberate, matured conviction and judgment of its members. In my conception, the recommendations of this Bar Association to the Legislature and to the people of Texas, on matters affecting the judiciary of this State and the practice and procedure in our civil and criminal courts, ought to carry great weight, and ought practically to be conclusive of the entire matter, and I think would be, if the people of Texas and the Legislature of Texas had reason to believe and did believe that such action of this Association represented its profound conviction after mature deliberation, and until that consummation is reached, until we can say to the members of the Legislature and to the people of Texas that our action upon a given matter, especially one affecting the court procedure or the judicial system of this State, does reflect the combined wisdom of the Bar of this State and the matured judgment of its members, we can not expect that it shall receive much consideration at the hands of the members of the Legislature. (Applause.)

I take it that I am about an average man. I say that because it is one of my methods of reasoning on matters which are addressed to my judgment. I try to work out my own conclusions upon the merits of the question, and then I assume that as I am about an average man, what I think about it will reflect fairly the average opinion of other people. My judgment is that we are not now ready to vote on these measures, and that we won't be during the sessions of this Association in Waco. I say it is a physical impossibility for any man, as a lawyer, to sit down in the limited time we have here and weigh and consider and digest the whole of this subject matter and pass an intelligent opinion upon what is necessary to be done, what ought to be done, with reference to the improvement of our judicial system and changes in our procedure, civil or criminal. Of course, as lawyers we have our pre-conceived notions. In the course of practice we have reached conclusions on this point and that point, but those conclusions are perhaps subject to change, and when we have here papers reflecting the matured convictions of men of standing and prominence at the Bar and on the Bench of this State,

they ought to receive careful consideration at the hands of our membership. They ought to be presented to the consideration of the public through the daily press. They ought to be presented in that way to the careful scrutiny and criticism of the entire Bar of Texas, and the matter ought to lie over until we can have the combined wisdom of the Bar, until the newspapers of the State have had opportunity to take up and dissect and analyze these questions, and throw the searchlight of public opinion upon all these points, until we shall have had time to discuss these measures with our business associates and clients and friends, and until every class in the community, the entire people of Texas, have had a chance to study and express an opinion upon these subjects. We have not had before this Association since its organization a more serious question for its consideration than that which is here presented. We ought to be deliberate about it. We ought to take time about it. We ought to know that these plans, these suggestions, which have been presented here with so much care by distinguished citizens of this State, have been digested and carefully analyzed and compared, and that we get the best of them. We ought to have an eclectic system. We ought to take the best of this and the best of that, and we ought to find the best system that is in vogue in other States, and we ought to present from this Association to the Legislature and to the people of Texas the best judicial system under the sun, and we would be recreant to our opportunity and neglectful of our duty to the people of this State if we failed to do that. (Applause.)

Gentlemen, if you will give this matter careful consideration, if you will appoint a special committee charged with the duty of ramifying this whole subject, of weighing and digesting and carefully analyzing and comparing all of these suggestions, taking such other suggestions as they may be able to get by correspondence with leading members of the Bar in this State, taking such suggestions as will be made by laymen and especially by the public press, then they will arrive at the proper solution. Let them get together. Let them compare their notes. Let them reflect upon it seriously, not upon a report which is read here and presented offhand; not upon a report which comes red hot from the printer, with only a few minutes or a few hours at most for

careful deliberation; but after mature deliberation of ~~months~~ let them get together and report back to this Association a plan of procedure, a plan for remodeling the judicial system of this State, a plan for making such changes and revision as may be necessary in the civil and criminal procedure of Texas. Then, and not until then, this Association will stand in its true light, in its proper colors before the people and before the bar of Texas, and before the Legislature of this State. Then let this Association show its faith by its works, and let them show to the people of Texas and to the Legislature that we have the courage of our convictions, that we mean what we say, and let this same committee or another committee be appointed and go to the Legislature and present its views and our request to the proper committees. Then that Legislature will adopt the recommendations of this Association practically without change, and the Bar Association of Texas will for the first time take its proper place in the annals of Texas. (Applause.)

JUDGE TOWNES: I am not sure that the resolution has been seconded. I would like to second it with this understanding—that it shall in no wise interfere with the discussion of these matters this afternoon.

MR. HAWKINS: I certainly accept that.

JUDGE TOWNES: This committee that is contemplated ought to have the benefit of a full, free and untrammelled discussion by this Association this afternoon, and with that understanding I second the resolution.

MR. SPOONTS: Not being a member of the judiciary, and belonging to the great bulk of the practicing lawyers of the State, I am of the opinion that the committee as drafted by the gentleman contains not enough of the practicing lawyers of the State, and too great a preponderance of the judiciary. The reforms we desire to make are of interest to the practicing lawyers as much as they are to the judiciary, as we are the ones who stand for the rights of our clients. I therefore make a motion to amend that by making it a committee of nine, composed of three practicing lawyers and the other members of the committee as suggested by the gentleman (Mr. Hawkins).

JUDGE STEPHENS: I would like to suggest a further amendment. That is, that this committee of nine be empowered to take

the matter up and talk to the next Legislature without the action of the Bar Association. I make that proposition for this reason—

A DELEGATE: The Bar Association meets before the next session of the Legislature.

JUDGE STEPHENS: Perhaps that is true, but, as suggested, there is a called session. My idea was this: If we want to do something that will be substantial and beneficial, we need a well selected, strong committee, to take the whole subject in hand and bring it before the Legislature, and I do not think it makes much difference what we may "resolute" as a Bar Association. The good work we will do will be in the selection of this committee, with power. And I am in favor of providing for their expenses and to give them compensation, and let it mean something. We meet annually and we say a great many things in a Pickwickian sense, and we have our tilts, but we ought to take the thing to heart. I do not think that what we resolve about it will amount to much, but if we will do something by selecting a committee, and empowering them to act, and providing ways and means by which they shall do something, then something may be accomplished. It has all got to be done by the Legislature after all, but any suggestion that members of the Association may have may be submitted to that committee, with their reasons and their arguments, and let the committee digest the whole subject and bring it before the Legislature.

MR. BRYAN: I do not think that the resolution provides for paying traveling expenses or expenses of that committee.

JUDGE STEPHENS: It ought to do it.

MR. BRYAN: Will you make the motion?

JUDGE STEPHENS: Yes, sir; that their expenses should be paid—their traveling expenses and hotel bills, and their actual expenses.

MR. HAWKINS: I will accept that amendment, but I do not think it ought to include compensation.

JUDGE STEPHENS: I suggest that they bring it to the Legislature without referring it to the Association. Mr. Hawkins says he has not been with the Association long. Neither have I. I became connected with it at Fort Worth, and this matter was brought up, and a committee appointed to submit a scheme to the next meeting, and it resulted in disaster so far as any ulti-

mate accomplishment of reform in Texas was concerned, and history repeats itself. Not enough men will take an interest in it, and if we can get a committee to take charge of it and submit it to the Legislature, it seems to me it will be better than to refer it back to the Association.

JUDGE RAMSEY: Gentlemen, I trust that the mover of the resolution, or some one else, will include in the motion a direction to have this committee to confer with the Governor looking to action at the ensuing special session to be called soon. At the regular session of the Legislature the Governor took a very deep, and, I think, an intelligent interest in a bill for the relief of the Supreme Court. The measure to which reference was made on yesterday passed the Senate by an overwhelming vote, I believe, of something like twenty and an opposition of something like six or eight votes.

MR. BRYAN: What measure was that?

JUDGE RAMSEY: That was the measure referred to as the bill drafted by Judge Williams of the Supreme Court. That passed the Senate by a vote of about twenty for and eight against. In that connection I desire to say that at that time practically the only objection made to the bill was to the very general and somewhat obscure language of Subdivision 6. I think Judge Williams recognized, as we all did, that there was some generality, if not obscurity, in that section, and I think that any gentleman who will undertake to draft a substitute for it will find perhaps the same difficulty that we found. However, as I understood on yesterday that a committee had framed a substitute on which they all agreed, I think there will be no objection, so far as I know, by Judge Williams, or Judge Brown, or anybody connected with the Supreme Court, who feels specially interested in the matter, to accepting the substitute, which the committee on yesterday all agreed was proper. But I desire to call your attention, and except for the information I have about the matter I would not have intruded myself before the body, to the imperative necessity for the immediate relief of the Supreme Court. There can be, I think, no sort of doubt that the Governor will submit this matter to the special session. In the first place, that will give an opportunity for more careful study and investigation by the Legislature than is likely to happen during a reg-

ular session, when a thousand things are pressing for attention, and when a road bill to many a man is a matter of as much importance as a bill for the relief of the highest court of the land. In addition to that, if this matter goes over to the regular session in 1913 it can not in the nature of things go into effect so as to be operative earlier than for the fall term of the Supreme Court in 1913. At this time, as has been stated, we are not only a year, but something more than a year, behind. In the fact of the composition of the Court, two men of very slight experience being on it, you will understand they do not perhaps do as much work as men of larger experience, and probably, I think, ought not to attempt to do work as rapidly. Not only that, but we have now two new courts of appeals which will begin writing opinions in October. It is as certain as anything in this world can be, that a year from today, unless relief is given, the Supreme Court of this State will be at least two years behind, if not more. Now, so far as the Court itself is concerned, it will do about so much work, and has perhaps a less vital interest in some relief than the great body of the lawyers of the State, but there is this feature about it: That in spite of one not seeking to be influenced by the present status he may be influenced by it. An application of writ of error is made. The Court can but be conscious of the fact that if granted it ties up the litigation eighteen, fifteen months, or a year. It is a right serious thing to grant a writ of error unless there is real merit in it, and how much more serious to refuse it if it is meritorious! The result ought to be, and probably will be, even more care and painstaking and time given the application, with the result, probably, of still further delaying the business of the Court. It seems to me with that granted, I should cheerfully and heartily support the resolution that this committee, amended by our friend, who wanted a larger number of practicing lawyers on the committee, a committee of nine, take the matter up with the Governor—go there and stay there and get the best bill they can, but get a bill. It may be difficult and will be difficult for every gentleman to be satisfied with the precise language of it. We lawyers all think that usually our plan is the best plan, and we do not always see the same merit in other men's views that we see in our own. In the nature of things there must be some concessions, but out of the

wisdom of these men who will come there and stay there, with such aid as we can derive from the Governor and the committee of judiciary No. 1 of the Senate and the House, who have studied the question, there can be, in my judgment, no sort of doubt that a bill can be framed that will have the result, not of crippling the Court but of aiding it to perform the great work it was designed to perform, and at the same time to do it with such expedition that a man can within a reasonable time get his case to the Court's attention and arrive at some result. I have no views or argument to make as to the kind of bill to present, though it seems that there is some difference on that, but I trust that this body will not adjourn until it shall have taken steps to appoint a committee to act, and go to the Legislature and Governor, and aid the Governor and Legislature in getting the very best bill possible, and I trust my friend, and our friends generally, will accept the view suggested by Judge Stephens, and elaborated by myself, and let the work of the committee in respect to the Courts of Civil Appeals and Supreme Court be made effective at the special session of the Legislature. (Applause.)

MR. T. S. HENDERSON: Mr. President: I can not bring myself to favor the proposition made in the motion as it now stands, because it results in a postponement, or at least, a shifting of the responsibility from this Association to a small committee. And the resolution, aside from this feature, suggests an amendment to the Constitution, which would involve further delay, and which would in effect express the opinion of this Association as believing that the present judicial article of the Constitution is not adequate for the purpose of our judicial system.

MR. HAWKINS: Upon that point I think the speaker has misapprehended the scope and effect of the resolution.

MR. HENDERSON: I thought as you read it they were to submit an amendment.

MR. HAWKINS: No; "if any"—if the committee sees fit to recommend and the Association to adopt.

MR. HENDERSON: It makes it broader, even, "if any." This Association ought to declare itself either as favoring a reform to the judicial system of this State under the present amended constitutional provision and under the present scheme of judicial administration, or it ought to suggest some other definite

plan, and not leave it to the determination of any committee. This is not a new question before the Association. I am an original member of the State Bar Association of Texas, with my friend Lewis Bryan over there, and it was a live question twenty-nine years ago. A very able lawyer took this matter under consideration, and he projected, or he drew, the present judicial article—the amended judicial article, as it now stands in the Constitution—Judge Simkins of Corsicana. It has been the judicial system of the State now for quite a long term of years. It has become established. The lawyers are acquainted with it. We understand it. We know how to practice under it. It seems to me that we ought not to delegate to a committee the idea of going out and changing radically the judicial system of the State, but we ought either to adopt some of the suggestions of the committee which will be under consideration this evening, or else, if there is to be a radical departure we ought to make it ourselves. In common with the Bar of the State, we have not been disinterested observers in the development of the judicial system, with its system of intermediate courts, and with all due deference, lawyers when they get together are apt to criticise the courts and the system of courts, but my conviction is, and I believe the conservative conviction of the Bar of the State is, that we have an admirable system, upon which we can graft (applause) and perfect for this State a system of administration of the laws of the State which will answer all the demands and requirements of a great State like ours. It is true that during the last session of the Legislature the lawyers rather let the politicians get the better of them, and yielding to the clamor of ambitious young cities they began to multiply these Courts of Civil Appeals, so that they are just about now on a par with the justice of the peace of precinct No. 8 (laughter), but that kind of thing can be corrected, and it is the duty of the Bar Association to correct it, and develop here the judicial system of the State, and uphold it and maintain it in its dignity, as it ought to, to grow with the State. The Supreme Court of this State as it is now organized has become the pride and the glory of the Bar of Texas, and what we want to do is to enable the Supreme Court to discharge its duties and its functions, under the judicial article of the Constitution, in a way that will dispatch the business of litigants in

Texas. We do not want by multiplication of intermediate courts, or of lower courts to encourage and invite litigation and invite appeals and invite writs of error, but we want to provide such remedial measures of procedure as will give every man a fair day in court, and after he has had it let him take his seat and be through with it. The public has a right to demand that of all litigants. It seems to me that we ought not to give this over to a committee. The Bar Association itself ought to assume the function of suggesting such reforms as may be necessary in the judicial administration of the State, and along the line as marked out by the committee on yesterday, and by the bill which Judge Williams suggested, and by the bill which Judge Speer suggested—both along the same line—improve upon what we have got, and have the benefit of the experience we have had in the past, and we can make for this State a permanent, substantial judicial system which will answer all the purposes of litigation in Texas. (Applause.)

MR. BRYAN: As I understand it, there seems to be a feeling that there is a pressing necessity right now to give the Supreme Court some relief, by means of limiting the jurisdiction of the Supreme Court, so that there will be fewer cases go there, as suggested by these several bills. Again, there is now before this body, suggested by a committee on yesterday, which was adopted unanimously by the Bar Association at San Angelo last year, a matter of procedure, which, as I understand it, in talking with various judges, several of whom are here, will limit the number of appeals, so that in this way there will not be so many appeals to the upper courts, and to that extent give them relief; that is the suggestion that the statute be so amended as to require all jury cases to be submitted and tried upon special issues. Judge Kittrell, one of the district judges of Harris county, stated in his term of court just closed, in trying the jury docket he tried six cases on special issues. Four of them accepted the verdict of the jury as final and there will be probably, he says, only two appeals out of the six cases. Judge Jenkins thinks that that amendment alone and that provision alone will limit the amount of the appeals 35 per cent, I understand. I think Judge Speer thinks it will have a material effect in lessening the number of appeals.

We all know that when a jury has only submitted to it questions of fact, you eliminate the question of any exceptions to the charge. There is no charge to the jury. They return the facts, and the court applies the law to the facts.

MR. YANCEY LEWIS: Would it be contemplated that the court would not instruct them as to the law that would relate to a particular issue?

MR. BRYAN: Oh, well, that might be so, where it is proper, but there are a great many cases where there is no necessity for special instructions. Perhaps my language was too broad, but, generally speaking, in most cases you can submit on special issues and let the jury find the facts and let the court apply the law. Now, that is a matter of procedure that could be presented, if it meets with the approval again of the Association this year as it did last, to the special session of the Legislature which meets next month, and it may be that we can get in this way—at least, I hope so—some immediate relief in the way of cutting off the number of cases that will be going up immediately to the Court of Appeals otherwise.

MR. SEARCY: Mr. President—To get back to the proposition that seems to be before the house, and to reply to the position taken by Mr. Henderson from Cameron. I understand that the Governor will submit to the special session of the Legislature a measure for relief of these courts. It occurs to me that if that be the fact the best thing that the Bar Association could do would be to appoint the committee, as suggested by these gentlemen, to be present at the time that this matter is before the Legislature and as members of the Bar Association to assist them as much as possible in framing such laws as may be necessary. If we do not have some committee from this Association there, the Legislature is likely to act without any help or suggestion from the Bar Association at all, and it occurs to me that the appointment of this committee, if the Bar Association wants to have anything to do with the framing of the bill that may be prepared, is a necessity.

MR. HENDERSON: Pardon this suggestion: I do not object to the committee, but I think it ought to be instructed.

MR. HAWKINS: Will you yield to a question of privilege, that I may read the resolution as amended to meet the views of the different members?

MR. SEARCY: Certainly.

MR. HAWKINS: I have changed it somewhat to make it responsive to the sentiment that has been expressed.

(The resolution was read by Mr. Hawkins as amended and is the same as heretofore set out. The original resolution provided for a committee of seven members, only one of whom should not be an office holder, and did not include Sections 4 and 5. After the discussion heretofore reported, Mr. Hawkins accepted the amendments suggested as shown in the change from seven to nine members, and from one to three members of the Association, and in the addition of Sections 4 and 5, and the resolution as thus amended, and as heretofore set out, was the one on which action was taken by the Association.)

MR. MCKNIGHT: It occurs to me that some further amending of this resolution is necessary. I think this Association ought to have something to say about what laws should be recommended to the Legislature, and that should not be left to this committee alone. We have a bill presented here by the Supreme Court for consideration. There are to my mind some right serious objections to that measure, and I think the Association ought to go on record as favoring the bill or as opposing it as it now stands. The same thing is true with reference to certain methods of procedure that are presented here. I think we ought to have some action by the Association as to whether we favor those suggestions about the remedying of our procedure, and that that matter ought not to be left to the discretion of this committee. After the Association has spoken, after it has considered the bill presented by the Supreme Court, and the other matters offered here along that line, and after the Association has expressed its views with reference to the improvements or changes in our procedure, then it will be proper for this committee to act with the Governor and the members of the Legislature in carrying out our wishes. But the resolution of the Association ought to present the views, and the views ought not to be simply the views of the members of the committee. I, therefore, move that the resolution be so amended as to provide that the Association shall speak its opinion and wishes with reference to these matters, and that after the Association has spoken the committee as its representatives act before the Legislature.

JUDGE SPEER: I concur in nearly everything that has been said. I appreciate the feeling that seems to pervade the minds of the Association this morning. I believe a plan can be devised from the various suggestions that have been made. This is no unimportant matter that we are now considering. It is a matter that deserves our best thought. It can not be done in a day. I appreciate the difficulties that lie in the way of submitting this entirely into the hands of a committee of any number of gentlemen. I appreciate the importance of this Association's passing upon the proposed changes in our system now under discussion, and I also appreciate in full the suggestion made by Judge Ramsey that what is to be done ought to be done quickly. The patient is either going to die or get well, and if we are going to prescribe we ought to be about it. I, therefore, suggest that if there is nothing in the Constitution of this Association to forbid it, that we have a called session of this Association, to meet at Galveston or Austin between this date and the sitting of the Legislature in special session, to hear this report of the committee as provided for, and to discuss it one or two days, or for such length of time as to get the full consensus of opinion of the Bar Association of Texas, and to make recommendation of concrete legislation to the Governor and Legislature, looking to relief from the evils which we recognize do exist at this time. I, therefore, make that as an amendment to the motion before the house.

MR. BURGESS: There is one other matter that is merely a matter of detail, and I presume can be agreed to without any formal amendment. We are authorizing the expenditure of the Association's money. They are to be paid out on the certificate of the several members of the committee, or the chairman of the committee, and there ought to be some limitation fixed to the amount of these expenditures. I would say not to exceed \$500. That ought to cover the actual expenses of reasonable attendance on the Legislature of a committee of that sort.

MR. HENDERSON: To get the matter a little further into concrete form before this Association, I offer as an amendment to the amendment that to this special committee be referred the bill offered by Judge Speer, and the bill presented by the committee as having been drawn by Judge Williams.

A DELEGATE: And Judge Hodges' bill.

MR. HENDERSON: The amendment I am going to offer will exclude Judge Hodges' bill—with a favorable recommendation that such measure as they present to the Legislature be along the lines brought out by these two measures. There does not seem to be any great conflict between them. They are along the same lines.

THE PRESIDENT: That would bring up the discussion that it is understood should not take place until the members of the Association were offered an opportunity to read those recommendations. They will be printed and before the Association this afternoon, and whether the Association adopts the recommendations or not will depend upon the best judgment of the Association after discussion, and I rather think your motion will be anticipating action.

MR. HENDERSON: The only trouble is if we do not agree on something now we will anticipate what we are going to do this evening, but the adoption of the amendment will relieve the Association from any further consideration of these measures this evening and will approve in a general way of the principles of these two bills.

MR. BARTHOLOMEW: If these measures are to be discussed this afternoon what good can come of the discussion if we have already acted this morning? It occurs to me that Mr. Burges' suggestion is the only wise one. If we adopt this resolution by a vote at this time we forestall action this afternoon, and not only that, but we rob the discussion of these measures of interest. It occurs to me that the wise plan would be to defer a vote on this resolution and amendments until we discuss these measures this afternoon. Otherwise, when we have discussed it and reached a conclusion we may find that conclusion at variance with the action taken this morning. If we were to adopt Judge Speer's suggestion of having a special session, it is only twenty-five days until the special session of the Legislature, and we might remain in session twenty-five days and discuss this. (Laughter and applause.) Mr. President, I do not want by a motion to cut off the discussion. If the merits of these measures can be presented in discussion at this time, it is well that it should be, but when the discussion is over, or if it is over now, I would make a motion

that we defer the vote on the resolution and amendments until after we discuss the measures this afternoon.

MR. HAWKINS: I am perfectly willing to accept that without a vote. I am perfectly willing to let it lie on the table until the matter comes up. I want the freest discussion.

THE PRESIDENT: Perhaps it would be well, then, to make a motion to postpone the consideration of this matter until afternoon.

MR. BARTHOLOMEW: That is the motion I make. It is suggested that I fix the time, but we will be unable to fix the time on account of the address which has been billed to follow the address of Mr. Littleton. I move you that further action be postponed until after the address this afternoon.

JUDGE TOWNES: It is now half past ten. The probabilities are we will have very little time for discussion this afternoon, after we hear the address of the gentleman who is coming from New York to enlighten us along many lines, and he does not begin until half past two. There will not be much time for discussion.

THE PRESIDENT: I expect we will get through and finish everything else at the morning session.

JUDGE TOWNES: This motion, as I understand, provides for the appointment of a committee, first, to carry out any instruction that may be given that committee by this Association at its present session; second, to consider the matter in a broader view and from a deeper point of view, so to speak, and present, if in its judgment it is proper, fundamental changes in our present judiciary article. That was my purpose in seconding the motion. I understood it to mean that whatever conclusion this body might come to this afternoon, it was necessary for a committee. The necessity of a committee to discharge each of these functions I think is apparent before this body, and I see nothing whatever incongruous or inconsistent in appointing your committee this morning and instructing it this afternoon. You can not get a committee from this body that will not obey instructions given to it after its organization just as readily as they would give in advance or concurrently with its organization. As there is a necessity, as I see it, for a committee to carry out effectively any action this body may take, I am opposed to the motion to post-

pone the appointment of this committee. Provide for or appoint your committee now, and then give all the rest of this morning and all the spare time this afternoon to a discussion of the instructions that the Association seeks to give its servants, and in advance I think we may say that those instructions will be honestly and faithfully carried out. (Applause.)

THE PRESIDENT: The Chair perhaps has misunderstood the resolution. As I understood the resolution of Judge Hawkins it did not contemplate any action of the Association at this time, but that the committee would make a report at the next meeting of the Association, and would then be governed by the directions of the Association.

JUDGE TOWNES: That was the original motion.

THE PRESIDENT: Then you seconded it with the understanding, which was accepted, that it would not cut off discussion this afternoon. In other words, the committee to be appointed would have the benefit of the discussion in formulating their report and recommendation to the next meeting of the Bar Association, but as I understand the resolution it cuts off any recommendation that the Association might make at this time.

JUDGE TOWNES: I do not so understand the resolution.

JUDGE STEPHENS: I want to call your attention to the fact that I offered an amendment to the resolution, which as I understood, was seconded by Judge Ramsey, which was to the effect that this committee be empowered to act without reporting back to the Association at its next annual meeting.

MR. HAWKINS: I have undertaken to cover the suggestion of my second, Judge Townes, and I will read it.

THE PRESIDENT: I suggest you read us the whole resolution, beginning at the first.

MR. HAWKINS: All right.

(The resolution as heretofore set out was thereupon read again by Mr. Hawkins.)

MR. BURGESS: Do you provide for the furnishing of a report? That suggests constitutional amendments. Now, anything that suggests constitutional amendments ought to be printed and furnished to us.

MR. HAWKINS: As I understand it, a constitutional amendment can not be submitted except at a regular session of the Leg-

islature. It is beyond the purview of the special session to do that. Therefore these bills will be anticipatory. Such relief as can be given under the present Constitution is supposed to be had at the next called session. The consensus of opinion seems to be that the Governor will submit to the Legislature such measures as are permissible under our present Constitution. Now, the printing of the bills which may be necessary to carry into effect these other changes which may be recommended, which may or may not be approved by this Association at its next annual meeting, would be a considerable item of expense.

MR. BURGESS: Yes; but it ought to be had.

MR. HAWKINS: That is with the Association. My first idea was like yours, but on reflection, in view of the fact that a constitutional amendment would have to be submitted and adopted, and there would be ample time, I thought it would be better to eliminate that item of expense.

MR. WILLIAMS: If there is no report on that you do not have to print it, but if there is a report you ought to have it printed.

MR. HENDERSON: The newspapers will print it and there will not be any charge for it, anyway.

MR. GREER: Mr. President, I am in hearty sympathy with the idea that we are absolutely unprepared at this time to make any recommendation. At any rate, I find that that is my difficulty. Even if I were to hear these gentlemen discuss the proposed measure during the entire afternoon, I find myself unwilling and unable to vote on this subject. It is a most difficult subject. The reform is needed we all concede, but when we take a step in this direction we want it to be an intelligent step. I fully realize the necessity of immediate relief. Therefore, I am in favor of the idea that whatever is done in the way of statutory reform should be submitted to the special session of the Legislature. I do not see the necessity of postponing that to the next regular session. Of course, the constitutional amendments may come up then, and they have to come up at a regular session of the Legislature. I am in sympathy with the idea that this committee ought to be appointed now. So far as statutory reform is concerned, it ought to be in a position to submit a bill to the Legislature, and to assist the Legislature in passing it, at the special session. I should like very much, however, to go with

Mr. Henderson to this extent, that I should like to see this Association adopt and have an opportunity to discuss, whatever measure is proposed. I should be willing to forego that privilege, however, rather than defeat present legislation. I see no opportunity for the Association to discuss such a measure unless we have an adjourned session. We can not pass on the proposition today. The bill won't be here until 2 o'clock. The address comes in the afternoon. That will probably consume at least an hour and a half. We will have an hour and a half here to reform our judicial system and to do those things that we know are of the greatest importance. Would any member of this Association except those few that are on the committee, that have studied the subject, be either willing or prepared to vote this afternoon? And, as suggested, if we are all as earnest about it as we seem to be now we would not object to going to the small expense of meeting at an adjourned session of this Association. So it appears to me that the suggestion made by Judge Speer, that we meet at Galveston or Austin—probably Austin is better—about the twentieth of this month, or when the Legislature meets, and then adopt some measure, something definite, to put before the Legislature, that will have the sanction of the committee and have the sanction of the Association, ought to be adopted. We can do something then. Now, can't we have the adjourned session of this Association?

MR. BURGESS: Suppose we have a tentative vote on an adjourned meeting, say something like the 27th or 28th. We can not afford to call one before the 25th, that is certain. Say, something like the 27th or 28th, and ascertain from this body whether or not there is a reasonable prospect of an adjourned meeting and a gathering at that meeting.

MR. GREER: What place would you suggest—Austin or Galveston?

MR. BURGESS: My experience in Austin the other day leads me to suggest somewhere else. I am like you. I think we have got to act now. The called session is going to pass a bill, and the called session ought to pass a bill. If we can materially assist them we ought to do it, and I believe we can better do it by the appointment of a committee of nine along the lines indicated, and by full consideration by that committee, and a full

report by them, printed and sent out to us not later than the 20th, so that we will have a week to act on. That gives them to the 20th to get their report in. It will give us until the 27th, or something like that, to consider it before we meet down there, and we will send out a report that is actually worthy of the right kind of consideration by the Legislature, because it has received the right consideration at our hands. Let us have a tentative vote now on an adjourned meeting at Galveston.

MR. SPOONTS: Will you yield to a question? Wouldn't it be a good idea, in considering that plan for the called session, to wait until the second day the Legislature is in session, for they won't get down to work to pass any bill for several days, and see whether or not the Governor will submit it?

MR. GREER: As to whether or not the Governor will submit this is largely dependent, necessarily, on whether we can agree on something. If we can point out something definite, some report that is tangible, and present our reasons, he will do it, I think.

MR. BURGESS: I do not think there is any doubt about it.

MR. GREER: We want this report printed and in our hands, and we want to study it just like we would study a brief or a law case. We are dealing with something that concerns the future and vitally concerns every one of us, and I want to see this printed report and have five or six days to study it. (Applause). Now, I want to get the sense of this meeting. I move that we have an adjourned meeting, to convene at Galveston on the 27th, if that is not Sunday.

MR. BURGESS: The 28th is the Monday following the prohibition election.

MR. WHARTON: I second the motion.

THE PRESIDENT: There is a motion before the Association, duly seconded, that further discussion of this matter be postponed until the afternoon session. If Mr. Bartholomew will withdraw that for the present—

MR. BARTHOLOMEW: I will withdraw that motion for the present.

MR. GREER: Mr. Hawkins, won't you withdraw your resolution, so that we can get this before the house in the proper way?

MR. HAWKINS: Yes, sir.

MR. YANCEY LEWIS: With reference to this adjourned meeting, I desire to make this suggestion: That under the constitution of this Association it is contemplated that we shall have a three days' session. Now, if we are in earnest about threshing this thing out thoroughly, and desire its full consideration, I venture to believe that we have more men here now, representative of the Bar, than will be at any adjourned meeting, and that if we wish to make some effort and to give some consideration to this matter in substantial fashion, there is no impediment whatever to our remaining here tomorrow, and not only putting in the day—the constitution is so framed we can do that—but we can have a very fair test of the extent of our desire to make some effort, some sacrifice, and to endure some discomfort in this connection, if we simply resolve we will stay here, having assembled in my judgment a very much larger number of lawyers than we will get together at an adjourned meeting.

MR. GREER: The trouble is this committee has agreed on nothing. We are all in confusion and doubt here. They have got nothing to recommend to us. We can not agree on a bill. We want the aid we need, of this committee, composed of members of the law faculty and judges, men who have studied this thoroughly. We have got nothing to start with. There is no man on that committee that agrees with the other. They can not present to us a measure. They can not create it this afternoon; that is, they can not do it right. They can not create it by tomorrow morning.

MR. LEWIS: If we have differences now, when we have constituted our committees in regular course of appointment under the constitution, I see no reason for apprehending that the same situation will not present itself if we take an irregular action and constitute a committee not known to the constitution. In other words, I see no relief from that situation in the suggestion of postponement, but I am impressed with the idea that under the operation of the present pass law, with reference to which I make no comment, that the attendance at Galveston will not be as large as the attendance here (applause), and that we are in a better position to give time to this matter, and to formulate the judgment of the Association at this juncture, even though we have to formulate it from the chaos of views that are now

before us, than we will be at any adjourned meeting. The attendance at this meeting is large, because of the fact that there is an unusual attraction in the address that is to be delivered by the distinguished gentleman who will be here this afternoon—much larger than otherwise would have been the case. It is my sincere belief that the attendance at Galveston, attractive as that place is, somewhere about the first of August, after our regular meeting has been held, and all of the incidental attractions of that meeting, in the shape of distinguished visitors and delightful banquets, are withdrawn, and after the season has come when many will have left the State, will not be comparable in strength, personnel and number to the attendance here now.

Mr. ESTES: I think Judge Lewis' views with reference to the success of the meeting at Galveston are unquestionably well founded, basing that statement upon the experience of some of us who have undertaken to do some unimportant work in the name of this Association between the meetings. I remember there was a committee appointed to appear before the Legislature in the interest of increasing the salary of the judges, a committee that was headed by as active, and as earnest, and as enthusiastic a man as there is in the State, and who was diligent and persistent in his efforts to get that committee before the Legislature, and to do the work that the Bar Association had entrusted to them, but he was never able to get a quorum, and the matter was never presented as it should have been by the representatives of this Association to the Legislature. I believe it is utterly out of the question to talk about getting anything like a representative membership of this Association at Galveston at any other time during this year.

With reference to what we should do and to what we can do, I merely want to suggest this: There are two propositions involved in the reports that have been submitted here. One involves fundamental changes in our judicial system. One contemplates possibly a change in our State Constitution. It anticipates, as Judge Hodges suggested, possibly that a man should have only one instead of two appeals. That is a matter that can wait. That is a matter which the committee entrusted by this Association with an examination into the matter can look into and report upon at the next regular meeting

of this Association. They are fundamental changes. They are far-reaching changes. They change our whole judicial system. The other contemplates matters of procedure. The other contemplates relief that is pressing and needed by the Supreme Court. It is a matter that Judge Ramsey says must be attended to, and should be attended to now. The matter is urgent. It seems to me that the only way to reach that, the only practical way, is like Judge Stephens says. We can not go into it here. We are not prepared. No body of lawyers is prepared to consider and determine such a matter with the time and attention we will be able to give to it. I think the only practical solution of it is to appoint this committee, with power to act, and let that committee appear before the Legislature, without any recommendation of this Bar Association, trusting to them under the emergencies and conditions that confront us to meet the situation intelligently and properly, and to the satisfaction and relief of the Supreme Court.

MR. WHARTON: Couldn't that committee meet at Galveston, with as many as will come and meet with it?

MR. ESTES: Yes; and it will not accomplish anything. That is not the way things are accomplished. The committee will get together and they will do ten times more if they are not interfered with by just a few men who will attend the meeting.

MR. BURGESS: Let me ask you a question, prefacing my remarks now with the statement that I am perfectly willing to leave it to the committee as far as I am individually concerned. The purpose of this vote was to ascertain whether or not we can probably get this meeting at Galveston, and I am inclined to think we will get a bigger one than we ever had. I think we can get a bigger one than we have had here, because I have not met a lawyer in Texas that did not feel a very great concern in this matter. Now, the purpose is to ascertain that. It was to get such a vote and such an expression of opinion here as will indicate whether we can get a good meeting at Galveston. Then are we not in a much better position, with not only the report of the committee, but with the action of a good rep-

representative meeting of the Association on that report, than we would be just on the report?

MR. ESTES: Certainly.

MR. BURGESS: As I understand Mr. Greer's motion, it is nothing but a straw ballot, so to speak. If we get a vote that indicates a probably good meeting after adjournment, let us have it. If not, let us abandon it and let the committee do it.

MR. WREN: I want to know whether or not the motion as drawn commits us to an adjourned meeting at Galveston. The motion as I understand it is that we adjourn to hold a meeting at Galveston. That then would not be a straw vote, but it would be a vote to meet in Galveston.

MR. WREN: What is the effect of the motion, if carried?

MR. BURGESS: Nothing.

JUDGE KEY: I do not think this body can take a straw vote. I understood the motion to be that when this Association adjourns it do so to meet in Galveston. While I am on my feet I wish to say that I fully agree with the last two speakers as to the expediency and advisability of pursuing that course. I have had some experience myself in serving on a committee, with Colonel Prather and others, to present a subject to the Legislature and the judiciary committee, and Colonel Prather and myself were the only members of the committee that ever got down there, and Colonel Prather had the bill prepared, and the Legislature very promptly turned it down. One member told me afterwards that the reason he did it was because he thought it was presented by the State University. I don't know how it was, but somehow he thought I was a professor in the law school, and he knew that Colonel Prather was a member of the Board of Regents, and therefore they very promptly voted it down. They did not believe in doing anything, so he said, that the law department of the University recommended. (Laughter.) Anyway, it is a fact that whenever a committee is appointed by this body, whatever is done is generally done by the chairman. Probably some other member will write a letter and say, "Whatever you prepare you can sign my name to." I think that is the way it will be if we adjourn to meet at Galveston. There will not be one-fourth of the members of the

Association who are here now who will go to Galveston or anywhere else for an adjourned meeting for that purpose, and they will never think any more about it when they get there than here. Then why not remain in session here until we dispose of it? I have no objection to the committee meeting there. I do not care how large the committee is. Put every member of the Association on it if you want to. But I believe we have got a better representation of the Association right here now than we will have at Galveston or anywhere else. This is a central location, and for that and other reasons pointed out by Judge Lewis we have a better representation here than we will have at Galveston or anywhere else we attempt to meet.

JUDGE STEPHENS: In order to bring the matter to an issue, I offer a substitute for all these resolutions and propositions.

THE PRESIDENT: There is only one before the house. All the others were withdrawn temporarily to act on Judge Speer's motion.

JUDGE STEPHENS: If I am in order and can get a second, I will offer a substitute for that: That the committee as designated in that resolution heretofore offered, be appointed, and that provision be made for the expenses as therein provided, and that that committee be empowered to act; that all these resolutions and papers be referred to that committee, and that it be empowered to act and take action at the approaching session of the Legislature to obtain such relief as may be thought to be best.

THE PRESIDENT: I am inclined to think, Judge Stephens, that your motion would not exactly be out of order, but it would not be germane at this time, because you assume that there is such a committee provided for. The resolution providing for such a committee is not even before the house now, having been withdrawn.

JUDGE STEPHENS: I made my motion to provide for the appointment of the committee. I simply eliminate from the resolution the details.

JUDGE KEY: If I understand, that is the substance of the resolution submitted by the chairman of the committee.

JUDGE STEPHENS: To eliminate—

MR. BURGESS: A point of order. I think if any motion of that kind is to be voted on, Mr. Hawkins is entitled to the floor. He simply withdrew it temporarily and by consent, in order to let us take a tentative ballot on the adjourned meeting. Now, if there is any objection to having a tentative vote on the adjourned meeting, that settles it, and Mr. Hawkins is entitled to the floor on the resolution.

JUDGE SPEER: I desire to speak to the motion before the house.

THE PRESIDENT: In order that we may understand what is before the Association, I want to state the understanding of the Chair. Yesterday there were some committee reports made, and they included certain recommendations affecting the judiciary. On motion of Mr. Burgess and the suggestion made by him that the members of the Association could not intelligently, or as intelligently as they would like to, vote upon these propositions and resolutions, further action was postponed, and it was made a special order for this morning, with direction to the Secretary of the Association to have these recommendations printed and distributed this morning before the meeting of the Association. Owing to the fact that the Secretary was not able to get the work done for reasons stated this morning, those printed recommendations are not before the Association, and will not be until this afternoon. At that stage of the proceedings this morning the resolution was offered by Judge Hawkins, and on suggestions of members certain amendments have been agreed to, so that I do not understand that at that stage any of the amendments to the resolution are really before the house. Then Mr. Bartholomew offered a motion to postpone the vote on the resolution (there was an amendment to it, the amendment suggested by Judge Speer), that further consideration of the resolution offered by Judge Hawkins and the amendment offered by Judge Speer, be postponed until the afternoon meeting, when we could get the printed reports and recommendations that were made yesterday. Then Judge Greer from Beaumont made a suggestion that the Association hold an adjourned meeting, or called meeting, at Galveston, on July 27th, and a motion was made to the effect that we hold an adjourned meet-

ing there for the special purpose of discussing recommendations for changes in the judiciary. At that stage of the proceedings Mr. Bartholomew withdrew his motion to postpone, which left only the resolution and amendment offered by Judge Spear pending, and they were withdrawn as the Chair understands, for the purpose of having a vote upon the resolution and motion offered by Judge Greer. Now, as I understand it, that is the only motion before the house, unless Judge Stephens would embody his ideas in a motion in such form that it could be acted on. Judge, you simply referred to the motion of Judge Hawkins, which is not before the house, and could not be considered by the Chair at this time as a part of your motion.

JUDGE STEPHENS: I withdraw the motion for the present, to take a vote on the other proposition.

THE PRESIDENT: I will state the proposition to see if I get it correctly. The proposition as I understand it is that all further discussion of these recommendations—

MR. GREER: As I understand it, if we put a motion that way we only just want to take the sense of the Association as to whether or not we are to have an adjourned meeting for the 27th, and see how many will be there, the idea being that anyone who votes for it ought to be willing, conditions being favorable, to go there. If not, he ought not to vote for it.

THE PRESIDENT: The Chair would be inclined to overrule the point of order made by Judge Key and hold that they can take a tentative vote upon the proposition of whether they will hold a meeting, and whether it is probable a sufficient number could be brought together for the purpose of the meeting. If that is the purport of Judge Greer's motion I would be inclined to put that motion to the house.

JUDGE KEY: I would like to inquire in connection with the point of order, doesn't the constitution or by-laws of this Association, as they now exist, prescribe that the Board of Directors are to fix the time and place of all meetings?

THE PRESIDENT: That is, for annual meetings.

JUDGE KEY: I did not understand how it was, whether it was the duty of the Board of Directors, and I am not sure but what either body has jurisdiction of this question. I am not

certain about that. I did not raise the question for the purpose of interfering; my object was to secure information.

JUDGE SPEER: I desire to say a word with reference to the pending motion. It occurs to me that this is a matter of such great importance to the Bar of Texas that when it is given out through the press that the Association has lent itself to the solution of this question, that it will guarantee the largest attendance at Galveston two weeks from now that we have ever had at any meeting of the Bar Association in Texas. I believe it is possible—not only possible, but I believe it is practically certain, that the lawyers of Texas, the members of this Association, will take such keen interest in the solution of this question that now confronts us, as to give us their presence at Galveston two weeks from now. The truth of it is most of us want to get down there, anyway. There will be cheap rates, and let us go down there. The suggestion has already been made, and it is a worthy one, that if the attendance is small, the committee must at least get together, and the committee will get together, and they will have the benefit of that discussion of those members who are there, and they will be in a position to formulate something tangible and present it to the Legislature, which will soon be in session. I really believe that the motion which has been made here will result in greater good, by having an adjourned meeting at Galveston two weeks from now, than to undertake to do it now, when everything is as nebulous and uncertain as it is. To sit here another day will be to prolong the uncertainty. There is not any formulated report before us, and it will take a day or two to get the committee together to formulate the report, and we can not accomplish it by tomorrow, in my judgment. If it is practicable to have an adjourned meeting, I am with you.

MR. ESTES: Is it contemplated this committee will meet together and formulate their report and have it ready there for consideration?

MR. GREER: Yes, sir; it ought to be.

JUDGE SPEER: That is a matter to be left to the committee to determine.

MR. GREER: I conceive that is the purpose of the meeting. I

would not vote for the meeting unless we could have the report at least five days before the meeting. We want the report to start on.

MR BALLEW: As I understand the motion, there is nothing really before the house. Why do we want to adjourn to Galveston unless we have a committee for that purpose? Unless we decide on the committee, I do not see why we want to vote to adjourn to Galveston. I do not believe the lawyers of this Association will be better posted at Galveston than they are now. I am in favor of appointing that committee to co-operate with the Governor and the Legislature, with full power. I, for one, am not one of the wise men that can take and decide a thing like that in two or three days' time, and I will not be any wiser at Galveston than I am now. That is a question of such importance and magnitude that there is no lawyer who would dare risk his reputation in passing upon it in the time that is proposed. The committee is composed of judges, who are interested, and who understand the thing, and who, after devoting the time that is necessary, will have money enough to go there and pay their expenses, and they will do more good than all the discussion that we can have here today or at Galveston. The density of a lawyer's ignorance is just as great as anybody else's, and if you are a lawyer and have not studied the question you won't know anything about it, and all the lawyers of this Association cannot form a correct opinion in regard to what the proper remedy should be for the existing troubles unless they devote several days' hard study in the library to studying the systems of other States. For that reason I am in favor of tabling this motion to go to Galveston, and of appointing this committee with full power to act. I therefore move that we table the motion to go to Galveston, and that we take up the motion to appoint this committee and end this discussion.

THE PRESIDENT: I do not hear any second to that motion and I will put—

MR. YANCY LEWIS: I second the motion to table.

THE PRESIDENT: I think it is too late to second it now. We will take a vote on the consensus of opinion, or on the sense of the Association, as it does not bind the Association, to meet at

Galveston. It is a tentative vote or test of feeling of the Association as to whether or not it is feasible and whether or not it is practicable to have a meeting, which I presume would be provided for later on during this session, in Galveston, about the 27th of this month, for the purpose of discussing the changes in our judicial system.

The question was put and resulted in a vote of 44 in favor of the adjourned meeting and 27 opposed thereto.

THE PRESIDENT: Now, gentlemen, I do not know what the situation is exactly.

MR. WHARTON: I suggest that Mr. Hawkins offer his motion again and embody in the resolution for the appointment of the committee to meet at Galveston.

MR. HAWKINS: I offer the resolution again, but think it is better to leave the other for a separate motion. If you want to go to Galveston you can do that by separate motion.

MR. WHARTON: What is the use of discussing this question all day and accomplishing nothing?

MR. HAWKINS: Let's arrange for the committee and then if you want to send them to Galveston do it. I move the adoption of the resolution.

JUDGE TOWNES: I second the motion.

MR. LEWIS: I wish to amend the resolution by instructing the committee to adopt the suggestion of Judge Stephens to the effect that it is the judgment of the Association and of the committee, that a law should be passed making the Courts of Civil Appeals the conclusive judges on questions of fact and whether or not there is evidence to support a fact. That is a specific declaration about which we can now formulate our view just as well as we can at any uncertain and indefinite meeting hereafter. I move that the resolution offered by Mr. Hawkins be amended as follows:

"Be it resolved, by the Bar Association of Texas, that in order to relieve the congested conditions of the Supreme Court docket and to avoid further congestion of same, the law be so amended as to make the decisions of the Court of Civil Appeals final on all issues of fact, including not only the sufficiency of the evidence to support a verdict on findings of the trial court,

but also whether there was evidence raising an issue, or whether the evidence was conflicting or undisputed on any issue in the case, and that this shall apply to rulings on the admission or exclusion of evidence, as well as to the giving and refusing of instruction and the action of the court on the motion for new trial."

MR. GREER: A point of order: It is not germane to the resolution. The resolution, as I understand it, is that a committee be created for the purpose of recommending to the Legislature such action on this subject as may in its judgment seem appropriate, and formulate a bill and have it printed, and this is to be submitted back to the Association for adoption prior to the meeting of the Legislature. That is what is contemplated. The proposition here to adopt some particular, definite action, does not seem to me to be germane to the purpose of the original resolution.

JUDGE JENKINS: Mr. Chairman—

THE PRESIDENT: A point of order is before the house.

JUDGE JENKINS: I yield to the point of order.

THE PRESIDENT: I think it would be better, if you will pardon the suggestion, that if an instruction of this kind is to be given to the committee that it be made by a separate resolution, and afterwards. I would be inclined to overrule the point of order. If the house saw proper to engraft upon the resolution an instruction to the committee as to what they should do, I am inclined to think it could be done. However, it would seem to me to be more orderly that whatever instruction you want to give, if any, should come in a separate resolution, but I will overrule the point of order.

JUDGE JENKINS: Mr. President, it occurs to me that if it had been our purpose, which I am sure it is not, to prevent this body from taking any action upon the important measure suggested by the report made on yesterday, we are accomplishing it very assuredly. Two hours and more have passed since the time of our convening, which have been consumed without having advanced the measure at all. So far as the appointment of a committee is concerned, that committee, of course, would be subject to any instructions that might be given by this body.

It might be very well, and it doubtless would be, to have a committee to act on matters that will not be finally disposed of by this body and cannot be, but I take it that the suggestion that we should delay from year to year and from time to time because we are not prepared is a suggestion that can be made with equal force at any other meeting. It has now been, I believe, some four years since first a committee was appointed by this body upon the question of judicial reform and reform in procedure. The matter that is immediately pressing for action is to relieve the Supreme Court. Are the members of this body not prepared to act upon that matter?

VOICES: No.

JUDGE JENKINS: When will they be? That bill was introduced in the Legislature and printed in every daily paper in Texas. Where is the lawyer that has not read it, and who has not had interest enough in this matter to have considered it, and what will he do more if you postpone it twelve months? We ought to act on that matter now. It is coming before the next Legislature. As I say, the bill has been introduced. It was discussed from day to day in the Legislature. It was printed in every daily paper in this State.

A DELEGATE: What is the point?

JUDGE JENKINS: The point is that the bill for the relief of the Supreme Court ought to be acted upon by this body and our recommendations made. When will we be ready? I believe we ought to take these matters up in detail. There are some other matters of procedure suggested by that committee. Those other matters, with reference to pleadings and to charges to the jury, were submitted at the last meeting of this Association at San Angelo. They were duly discussed before that meeting. They were adopted by a unanimous vote. They were printed in the proceedings of that meeting. Every member of the Association presumably has read them, and if we are not prepared to act upon them now, when will we be prepared? I say, let us take these matters up one at a time, because the merits of one do not depend upon the other. Appoint your committee, if necessary, but do not let that preclude the action of this body. Let us reserve the power to instruct this committee with refer-

ence to this bill that has been introduced and that will be submitted. As to whether anything else will be submitted at the special session is problematical. I consulted the Governor upon the question the day before I left Austin, and he told me that he would submit the matter of relief of the Supreme Court, but he had not made up his mind whether he would submit any other matter to the special session. Let us express our views. Let us take the bill up as reported by the committee and the bill as drawn by Judge Speer. Let us take it up and discuss it, and let us have the consensus of opinion, or the opinion of the majority of this body, as to what ought to be done to relieve the Supreme Court. I do not know just what way to get it before us. I believe the way is to appoint a committee. I have no objection to that. But when that is done, then I say let's get to work and do something with reference to these other matters. Already we have wasted this time. At 2:30—we will not meet before that time—Mr. Littleton will speak and most of the evening will be consumed, and we will adjourn for a banquet tonight, and nothing will be done. So soon as this motion is out of the way then I shall insist on taking the matter up with reference to the Supreme Court and dispose of the matter at once.

MR. HAWKINS: Just one word. The expression—

MR. SANFORD: Mr. Hawkins, will you yield just one moment? Col. H. N. Atkinson of Houston is on the program to read a paper. Col. Atkinson until recently was a resident of Waco and a member of the Waco Bar. A number of the Waco Bar and a number of Waco people not members of the Bar are here this morning for the purpose of hearing Col. Atkinson. I suggest, Mr. Chairman, that other matters be postponed until we can hear Col. Atkinson's paper, and I now move that pending business be suspended, and I request all the members of the Association to join me in this until we can hear Col. Atkinson's paper.

MR. HAWKINS: Col. Atkinson is a personal friend of mine, and I am certain that I voice no disrespect to him in saying that we ought to take this vote now. It won't take but three

minutes to do it, and then we can hear it. Let us clear the deck for action. Let us take a vote this morning.

THE PRESIDENT: I don't know. I am going to ask Judge Lewis to put his amendment in writing. There is an amendment to your resolution before the house.

MR. SPOONTS: And there will be considerable discussion on that amendment.

MR. HAWKINS: A word of explanation, in line with the suggestion made by Judge Jenkins. This resolution of mine provides in express terms that the committee shall take the matter up with the Governor and Legislature, pursuant to such instructions as this Association may give it. Now, we are bound to have, or at least, we ought to have, that committee. Let us authorize the committee, and then hear the address of Judge Atkinson, and then afterwards give the committee such instructions as this Association sees fit. That takes it in regular order. We can dispose of the motion in three minutes.

MR. BURGESS: A point of order. This whole discussion this morning was by unanimous consent and out of the regular order. The gentlemen are mistaken about being able to settle anything in three minutes. We have quite a lot of amendments pending here, and one of them has got to be reduced to writing before we vote, and they have got to be voted on in order, and I make the point of order now that we are entitled to proceed with the regular order of business, and as far as I am concerned, I am going to continue from now on to insist on the regular order of business until Colonel Atkinson is heard. (Applause.)

THE PRESIDENT: I do not believe his address is the next regular order of business. The next order of business is the election of members and the reports of some other committees, and the address of Mr. Littleton. I do not think the motion of Mr. Sanford is in order.

MR. BURGESS: Here is the point—that there is no objection to suspending the regular order of business and hearing Colonel Atkinson, and if we are not going to hear Colonel Atkinson, then I insist on the regular order of business.

THE PRESIDENT: The motion before the house is that the

regular order of business be suspended, and that the Association now hear the address of Colonel Atkinson of Houston.

The motion was seconded and unanimously adopted. Colonel H. N. Atkinson read the following paper:

(The paper of Mr. Atkinson will be found in the Appendix.)

JUDGE STREET: Mr. President, I ask unanimous permission to have read by the Secretary a telegram I have just received, and after it has been read, that it be referred to the Board of Directors.

The Secretary read the following telegram:

"Galveston extends to the Texas Bar Association a cordial invitation to hold their next annual convention in this city.

(Signed)

"GALVESTON COMMERCIAL CLUB."

THE PRESIDENT: The telegram will be referred to the Board of Directors.

MR. SPOONTS: The Board of Directors beg leave to submit the following:

"The Board of Directors beg leave to report that they have thought it best to change the rule heretofore prevailing under which the incoming President acts as toastmaster at the banquet, and hereafter the retiring President will preside at the banquet, but on account of the fact that the Hon. Hiram Glass presided over the banquet last year, the Board has selected Mr. Allan D. Sanford to preside over the banquet tonight, and hereafter the retiring President will preside over all sessions until adjournment and at the banquet.

(Signed)

"JNO. T. DUNCAN, Chairman,

"MARSHALL SPOONTS,

"W. T. BARTHOLOMEW,

"Board of Directors."

THE PRESIDENT: That is a report from the Association and requires no action.

MR. SPOONTS: No, sir. I submit the following report recommending the election of certain members, and I move that the Secretary be instructed to cast the vote of the Association for their election.

WACO, TEXAS, July 5, 1911.

Hon. Hiram Glass, President Texas Bar Association.

DEAR SIR: The Board of Directors beg leave to report that the fol-

lowing persons have applied for admission to membership in this Association, and the Board of Directors having fully considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

J. H. Anderson.....	Marlin
Nat J. Lewelleyn.....	Marlin
J. W. Woods.....	Houston
E. H. Hooser.....	Gatesville
W. N. Foster.....	Conroe
Richard I. Munroe.....	Waco
S. E. Stratton.....	Waco
J. N. Gallagher.....	Waco
Abe Gross	Waco
E. C. Street.....	Waco
T. M. Dilworth.....	Waco
Tom G. Dilworth.....	Waco
J. B. Atkinson.....	Cameron

Respectfully submitted,

JOHN T. DUNCAN, Chairman,
MARSHALL SPOONTS,
W. T. BARTHOLOMEW,
ALLAN D. SANFORD,
Board of Directors.

THE PRESIDENT: You have heard the motion that the Secretary be instructed to cast the vote of the Association for the election of the gentlemen named. What is your pleasure?

The motion was seconded and unanimously adopted.

THE PRESIDENT: What is the pleasure of the Association with reference to the question pending?

MR. SPOONTS: I move we adjourn until 2:30 p. m.

THE PRESIDENT: I want to state before the motion to adjourn is put, that I am informed that Hon. Martin Littleton of New York will address the Association at the Auditorium just across the street, immediately upon the convening of the convention session, and instead of meeting here the Association will meet across the street in the Auditorium. The seats down next to the front will be reserved for the members of the Association. There will be a great many other outside parties there. There is room for all, a very pleasant place to hold a meeting, I under-

stand. Now I would like to know what the pleasure of the Association is as to whether they will return to this hall after the address has been delivered.

MR. ESTES: I think we can deliberate more satisfactorily over here. I move that we return here after the conclusion of Mr. Littleton's address.

THE PRESIDENT: If there is no objection to that suggestion, the Association will meet and hear the annual address, and immediately return to this hall for consideration of unfinished business coming before the meeting.

Thereupon the motion to adjourn was unanimously adopted.

JULY 5, 1911—AFTERNOON SESSION.

At 2:30 p. m. the Association met in the Waco Auditorium to hear the address of Hon. Martin W. Littleton.

(The address of Mr. Littleton, delivered before the Association will be found in the Appendix.)

After Mr. Littleton's address, the Association reconvened at the Knights of Columbus Hall for the purpose of attending to unfinished business.

THE PRESIDENT: Unless there is objection to it, the pending business is the resolution offered by Mr. Hawkins, and the amendment offered by Judge Speer, pending this morning. I do not know whether I understood that the point of order was made by Mr. Burges against considering this until the regular order of business was disposed of or not.

MR. SPOONTS: The point of order was only until after Col. Atkinson's address.

THE PRESIDENT: Wasn't it moved and seconded that the regular order of business be suspended and that this matter be taken up?

MR. SPOONTS: That order was passed until the afternoon, and the resolution offered by Mr. Hawkins came up in the afternoon.

MR. W. D. WILLIAMS: It is now afternoon, and immediately after Mr. Littleton's address, and it seems to me that the action previously taken by the house makes the resolution and the

whole question the order of business on hand right now. There is no other business that can be taken up right now, except by order of the house.

MR. HAWKINS: Mr. Chairman, I understood that the consideration of these reports was made the special order for today, and it was with that idea I offered my resolution. When the point of order was made this morning, we were proceeding by consent merely. I had already expressed my desire and my opinion that we ought to dispose of the pending business before we took up anything else, but I did not care to antagonize the suggestion any further. I think we are strictly in order now. I think that was a part of the business pending under the head of reports, and we are now dealing with reports, and the resolution is germane to that issue, and so unless the Chair shall rule otherwise, I shall insist upon a vote now upon the resolution.

THE PRESIDENT: There was an amendment pending offered by Judge Lewis, which was reduced to writing, and I would not wish to risk my recollection in stating it.

Judge Lewis read the amendment referred to, as hereinbefore set out.

THE PRESIDENT: Do I understand you offer that as an amendment or addition to the resolution offered by Judge Hawkins?

MR. LEWIS: Just an addition to it.

MR. SPOONTS: I move to table that amendment. I do not think that is proper in the appointment of a committee. Some of us might be opposed to that who would not be opposed to the other, and find some difficulty in voting on it.

MR. JOHN L. DYER, JR.: I second the motion to table.

The President put the motion to table, and upon a viva voce vote, announced that he was in doubt of the result, and called for a standing vote. There were thirteen votes in favor of the motion to table. Those opposed to the motion to table were then requested to stand, and without counting the number, the President announced the motion to table as lost.

THE PRESIDENT: I hardly think it is necessary to count them.

The motion to table is lost. The question now occurs upon the adoption of the resolution offered by Judge Lewis.

MR. GREER: I hope the Association will not adopt that amendment. If we create this committee, we certainly ought to give them full authority to bring in a proper bill. Whether this is or is not a proper amendment to the present law is a question that a great many members of this Association must necessarily feel they do not now care to decide on. I have now in my own mind a grave question as to whether we can declare something to be a question of fact that is really a question of law, and deprive the Supreme Court of jurisdiction of that particular question. Then I furthermore have a serious doubt about the wisdom of doing such a thing. At any rate, I am not prepared to pass upon the question, and I do not believe the members of the Association are, and I do not believe we should instruct this committee now. There is no necessity for it. Its important duty is to deliberate and construct something. If it is not that particular duty, I do not know any reason for its creation. We certainly do not wish to appoint these distinguished gentlemen on a committee of this character merely for the purpose of going to the Legislature and lobbying with the Legislature to get a bill through that the Association endorses. I believe that most of us are very much in earnest about the relief of the Supreme Court. I know that I am, and I believe that the members of this Association are in earnest, but we do want to be cautious enough to know that what we are doing will improve the present law and give relief at the same time. Are we prepared to vote on an important matter of this sort without any discussion, without even scanning the language of that resolution, without comparing it with the present constitution, without realizing its effect? I have cases in my mind now where it was a question of law as to whether certain facts raised an issue. Our Court of Civil Appeals at Galveston said in an important case that it did not do so. It was a difficult question. It was a very important suit. The Supreme Court granted a writ of error and said as a matter of law the evidence in that record did raise the issue. Now, are we going to summarily pass a resolution and recommend a law that will

deprive the Supreme Court of jurisdiction over a question of that sort? It may be right, but are you prepared today to say it is right? Have we deliberated on this question enough? If we are going to create this important committee, and I believe the Association is in earnest, let us give them full power, and if they have an opportunity to report to us at an adjourned session, let them do it. Let their work presented to the Association represent investigation, deliberation and construction. We are not prepared to vote on a question of this sort, gentlemen, today, and in order to give this committee the proper power to deal with this subject, let us create them now, and let us not make of them a sort of mere agency to deliver our will to the Legislature and become a lobbying committee, but we want this committee to frame for us a proper bill on the subject, and I believe we are in earnest about it.

MR. SEARCY: I rise to ask a question of Mr. Greer. I understood him to say that he wanted to appoint this committee to go untrammelled to the Legislature by any instructions from the Bar Association. Didn't I understand him this morning to be in favor of an adjourned meeting at Galveston to adopt the report of the committee and send them up there to have it carried through?

MR. GREER: You misunderstood my position. I want them to be untrammelled to construct a piece of legislation to present both to us and for our adoption if we have a meeting, but if we cannot have such a meeting, then I want them to present a bill that will represent their deliberate thought and investigation, and not our instruction.

MR. SEARCY: I want to appoint the committee, but I do not want any adjourned meeting. I want the committee to go on and meet with the Legislature for the purpose of drafting the best bill they can get.

MR. GREER: Let me ask you a question. Do you want to create a committee now and tell them what kind of a bill to bring in?

MR. SEARCY: No, sir; I do not, but I want to try and give the Supreme Court all the relief we possibly can. I believe that the Supreme Court ought to be simply for the purpose of

keeping the decisions of the Courts of Civil Appeals all in line, in order that we may know what the law is.

MR. WHARTON: In other words, a figurehead.

MR. SEARCY: No, sir. I do not think that they are a figurehead when they must say when the Courts of Appeal get wrong.

MR. WHARTON: Mr. President, Gentlemen of the Association: I have just this word to say, and you will live to remember it. You are passing a resolution that provides for eight Supreme Courts in eight separate sections of this State. That is the effect of it. I believe in one appeal. I do not believe in the delays of two appeals. I believe we ought to have a Supreme Court big enough and able to take care of all the appeals, and have one appeal, but just as sure as you pass that resolution you make from El Paso to Texarkana and from Galveston to San Antonio a system of eight Supreme Courts, and it will come back to plague you. That is all I have got to say. I am a young man, but I want to tell you right now, that if such a resolution passes and such a bill passes, just as soon as you have got two systems of courts, every Legislature for a generation will be tinkering with the jurisdiction of these courts. It will go up and down and down and up and backwards and forwards. You won't have any unanimity about it as long as it is open to every Legislature to tinker with the jurisdiction of these courts, take it away one Legislature and restore it the next. When that bill passes, ninety per cent of all the cases that you appeal will become final with the judgments of these Courts of Appeals scattered around over the State. I do not mean to criticise the judges of those courts. They are better lawyers, no doubt, than I, but I do want to tell you that within the last sixty days men have been appointed on those newly created courts who have had less experience than probably almost the youngest lawyer in this house. In their hands, inexperienced and untried men, you are putting the jurisdiction of the Supreme Court of Texas, and you are making that Supreme Court a figurehead and nothing else. (Applause.)

MR. HAWKINS: I desire just a word with reference to the amendment. There have been several requests to read this resolution and I beg permission to read it in connection with

the amendment, and I want the members of the Association to hear it in the light of this suggestion. I am not undertaking in this resolution to in any way control the action of this house with regard to instructions to that committee. All that I am asking you to do is to vote first on the creation of the committee, and leave for subsequent action, by the adoption or rejection of this resolution, or any other resolution that may be presented here on that or any other question, the question of whether you will instruct the committee and how you will instruct the committee. I simply make this appeal: Create the committee first, before we get down to these discussions and dissensions here on these details. Let that much at least be finished. Create the committee and then take up, if you like, the detail as to whether you will instruct the committee or not, and as to how you will instruct the committee. Omitting the "whereases" I will read the operative part of the resolution. (Mr. Hawkins read the resolution as stated and as heretofore set out, and continued his remarks as follows): Now, gentlemen, I feel it is inopportune, before the adoption of some resolution, creating some committee to deal with this matter, to take up in detail the idea of Judge Lewis, or the idea of Judge Hodges of the Court of Appeals of Texarkana, or the recommendations of any of these reports, and for that reason, and for that reason only, I am opposed at this time to the adoption of the amendment suggested by Judge Lewis. Further than this, this deponent sayeth not. And I pledge you my word that while I tried to listen to the reading of the resolution, in the confusion and the rain it was impossible for me to follow it with sufficient care to know what is in it, and I would not know whether to vote yes or no on it, and I doubt not half of you are in the same fix. Let us pass this resolution or some similar resolution. Let us create the committee, and then let us take up as matters of detail the instructions we give to it. But if we are going to have a vote on Judge Lewis' amendment, then I say we ought to have a full and free discussion here, and have that resolution read again and read until the membership of this house know what is in it, and until we have had time to determine in our own minds how we shall vote. For that rea-

son I insist we ought to vote on this resolution creating the committee separately and then take up the detail. (Applause.)

JUDGE SPEER: Gentlemen, it does occur to me we ought to appoint this committee. There seems to be an idea we ought to instruct the committee. I say to you, gentlemen, that I am anxious for discussion by this body, and after we appoint this committee, if we shall do it, then if this body wants to instruct it I am ready to vote with you and work with you to instruct it, in whole or in part, on any question you want to instruct it upon, but first of all, let us have this committee, and to that end I think we ought to vote down the amendment at present, as such, without committing ourselves upon the merits of the matter presented therein.

JUDGE KITTRELL: I move to amend the resolution by adding thereto the words, "with power to act." If I understand the meaning of that term in parliamentary language, it means to give the committee full and unrestrained power. So far as I am concerned, I am willing to adopt, and vote for, and support any bill that the committee this Chair will appoint will recommend to the Legislature, without reporting back to anybody, anywhere, at any time.

MR. W. D. WILLIAMS: The point of order that there is one amendment already pending.

THE PRESIDENT: The point of order is sustained.

MR. LEWIS: It had not been my desire to discuss this question at any length. I wish to say that I am in favor of the suggestion of Judge Hodges that we have one Supreme Court and one appeal, and I shall favor that proposition at all times and whenever it presents itself. I do not commit myself in opposition to it by offering this amendment and voting for this proposition. Upon that question, when it arises, I do desire to be heard in the way of making some suggestions. I shall not discuss it at this stage. We are confronted here with the proposition that that would require a constitutional amendment, and what we now need is immediate relief of the Supreme Court, that is falling behind with its work. I think that under the Constitution as it now stands, the Legislature has authority to pass this proposed amendment. I wish to say, gentlemen, that

I have been coming to the Bar Association meetings for nearly ten years. Every one of the questions that are being considered today have in one form or another been considered at those meetings. Nearly all of them have been defeated upon a final test of strength. At the Texarkana meeting, as I recall, we appointed a special committee, composed of judges of the Supreme Court, of the Courts of Civil Appeals, of district judges and of members of the Bar Association in general practice, who were to consider and make a report. We appropriated \$500 to have that report made. It was presented, after the maturest consideration, and Judge Brown of the Supreme Court, at Fort Worth, led in the endeavor to secure its adoption by this Association. Every one of its substantial recommendations was voted down. At other meetings the endeavor has been made to secure the adoption of remedial suggestions. I have on every one of those occasions voted with the judges of the Supreme Court and of the Courts of Civil Appeals who attended the particular meeting at which the endeavor was made. I have seen nearly every suggestion that sought to facilitate the dispatch of business, to curtail the right of unlimited appeal, to make more simple the procedure of this court, defeated; and I do not make any personal suggestion when I say that the gentlemen who are opposing this instruction to the committee now in large part have aided in defeating those measures heretofore. I make that in explanation of the fact, however, that it may not be believed that I am acting captiously when I assert the power of this Association, which creates a committee, to give it an instruction with reference to a particular matter which will go far toward preventing that congestion which now exists in the Supreme Court. If it has power to create that special committee, it is neither arrogant nor impudent, but it is in keeping with the dignity of this Association, that it shall, with reference to any matter that it deems of importance, instruct the agency that it thus creates, and give them the judgment of this Association, if its judgment be mature and in favor of a particular proposition, and to that extent alone my proposition now goes. Gentlemen, it has been said that Judge Simkins drew this original bill, and my information is that that is correct,

acting in conjunction with his brother. I have been repeatedly assured by the gentlemen who drew that bill that in its phraseology they drew it with no other intent than that the Court of Civil Appeals should have final jurisdiction with reference to all questions of fact, and that the Supreme Court should exercise jurisdiction in the cases prescribed with reference to the law of the State, and thus keep the law of the State in harmony. Now, if you are not in favor of two appeals, with its resulting cost and delay, why is it to be urged that you can not trust one court, constituted of capable and able lawyers and gentlemen, as we must assume that they are, of three men having proper legal knowledge, just as well as you would trust any other tribunal? There must be confidence somewhere, gentlemen. There can be no administration of the law, and no finality of litigation, and no ultimate and conclusive determination, unless you are willing to repose confidence somewhere. If the Courts of Civil Appeals are qualified to perform their other duties are we to indulge the presumption that they will make findings of fact that are contrary to the record with reference to the weight of the testimony, or with reference to the question whether there is evidence at all, or with reference to some question of fact that relates to a bill of exception? I want to relieve the Supreme Court, and I have no other motive in mind except that. I believe that our present system is awkward, cumbersome, fruitful of unnecessary delay, indeterminate in its result, and calculated to deprive us of the benefit of a larger judgment upon questions of constitutional law, or of first impression, or of novelty in our jurisprudence, than would be a different system, composed of one court, acting in sections. But if you are going to have the present system, even temporarily, continued, why is it that we trust as much as we do to the Court of Civil Appeals, and indulge the presumption that we can not permit them to say as matter of finality whether there was evidence upon a given proposition raising an issue? What simpler thing can be presented to an appellate tribunal than that question? What question is it that requires less of the consideration of another appellate tribunal than that question? We are saying that we will not challenge the ability of

this committee we are to create by giving them an instruction, and yet we challenge both the ability and the integrity of the Courts of Civil Appeals when we say that they can not be trusted to say whether or not, in the face of a printed record or a type-written record there is evidence raising an issue. (Applause.) I wish to say to you, gentlemen, that if I believed that, if I believed we must have three other gentlemen to pass upon that issue, then I should urge, in this Bar Association and everywhere else, that there existed sufficient reason and an imperative demand and public necessity, that this system of courts of civil appeals be utterly done away with and removed from our jurisprudence.

MR. WHARTON: Let me ask you a question. You do not believe in two appeals, do you?

MR. LEWIS: I do not.

MR. WHARTON: Then why two appellate courts?

MR. LEWIS: As a mere matter of convenience now, to bridge a temporary necessity and until we can get rid of this system. I understood you agreed with me in that proposition.

MR. WHARTON: I do. I believe in one appeal, but I say just as long as you have got two appellate courts you have got the temptation and the chance for two appeals.

MR. WATKINS: May I ask you (Mr. Lewis) a question? Suppose one Court of Appeals should hold certain facts as matters of law—hold one way and another Court of Appeals should hold exactly the same facts to be not sufficient, and they have done it. I call your attention to the fact that time after time they have done so.

MR. LEWIS: That would be a conflict in the decisions.

MR. WATKINS: Then what would you do?

MR. LEWIS: I would suppose that would fall under the provision that relates to conflicts in decisions.

MR. WATKINS: I understand, but if you make it final?

MR. BRYAN: In a case like that, of difference between the Courts of Appeals and the Supreme Court, the Supreme Court decides it.

MR. WATKINS: But he offers a resolution in which he says the decision of the Court of Appeals shall be final on the facts.

Now, one court decides that point and it is final. The other court decides exactly the same facts contrary to the first court. Suppose they should find the facts now in a certain way. Suppose one Court of Appeals should now say under a certain state of facts one thing, and another Court of Appeals, under the same facts, should hold the contrary, what would you do?

MR. LEWIS: That would be a difference of opinion, and it would go to the Supreme Court.

MR. BRYAN: That is what is provided in these bills. Judge Speer's bill and the other bill both provide for that.

MR. WATKINS: If you mean where there has been difference of findings this thing goes up, then the idea commends itself to me, but you make it final.

MR. LEWIS: I wish to make it final except in those cases in which the jurisdiction might be predicated upon other grounds enumerated in the bill and in the act.

MR. WHARTON: I understand you agree that there should be but one appeal, and your only object now is the temporary relief. Ultimately you will be in favor of abolishing intermediate courts and having but one appeal?

MR. LEWIS: Ultimately I would be in favor of Judge Hodges' idea.

MR. WHARTON: Let's agree on that now, then.

MR. LEWIS: I never can control the agreement of other gentlemen.

MR. WHARTON: Well, you and I can agree on it? (Laughter.)

MR. LEWIS: Yes, sir. We can agree on it. I do not want to encumber this question with a discussion of that question at this time.

MR. WHARTON: If that is the idea of this, that we shall have but one appeal, we are merely temporizing with it in the method we are undertaking now. We ought to have but one appellate court.

MR. LEWIS: That will need a constitutional amendment, and they might not adopt that constitutional amendment. We are now dealing with a situation that calls for relief, and I am addressing myself to that particular phase of the matter.

MR. ESTES: Take the case Mr. Watkins mentioned, where the

Court of Civil Appeals, for instance, has decided that there were not facts in the record on which to base certain charges or predicate certain conclusions of law, and the Supreme Court looking over that record would hold there were facts. Under your amendment you would deprive the Supreme Court of the right to make that sort of ruling.

MR. LEWIS: Yes, sir; because that is not a question of law.

MR. GREER: I think these courts ought to be permitted to find conclusions of fact, but I do not think they ought to be permitted to find conclusions of law. I believe sometimes you understand a question by concrete illustration. The specific instance I have in mind is this: You know the question of innocent purchaser. The subsequent purchaser must prove affirmatively, under the law, as I understand it, that he bought without notice and paid value, and up until recently that had always been proven by direct and positive testimony—by direct testimony. The question came up about a year or two ago as to whether certain circumstances raised that issue—the assertion of ownership by the subsequent purchaser, and the non-assertion, and certain circumstantial evidence—and the contention was made that the circumstances in that case raised the issue. The Court of Civil Appeals held it did not. The Supreme Court, I think very properly, held it did. Now, that was a question of law. Would you want to deprive the Supreme Court of the right of passing on a question of law of that sort?

MR. LEWIS: You are assuming it is a question of law. I want to leave the determination of that question as a finality to the Courts of Civil Appeals, with a view to relieving the Supreme Court of the necessity of practically considering the facts in nearly every case that might be brought before it, where any of these contentions are raised. I want to make that finding final with the Courts of Civil Appeals, believing that it is an absurd system, an utterly indefensible system, that constitutes two bodies of appellate judges, and says we can not trust one of these bodies to take a record, where the facts are not in dispute and can not be in dispute, and to make a finality in their finding, but that that function must be subject to the review of still another appellate tribunal. I say that involves

either one of two conclusions: That the Courts of Civil Appeals, in the exercise of one of the simplest functions that come before them, lacks either the ability or the integrity to make an honest conclusion from a record. Men may differ in the trial courts, but they should not differ with reference to what a record discloses as to what the facts are, and whether there are facts that raise an issue upon that question. I say that it seems to me that there is no reason, nor logic, nor precedent in the jurisprudence of the world, which leaves that question subject to the review of two appellate tribunals.

MR. SPOONTS: Will you permit one question?

THE PRESIDENT: I dislike very much to cut off debate, but as the time is very short, I will have to enforce the rule and limit the debate, because we have only about an hour and a half now to wind up the entire work of the Association, unless there is to be a meeting tomorrow.

MR. LEWIS: I am going to surrender the floor.

MR. CHAMBERS: Mr. President—

THE PRESIDENT: Are you going to ask a question?

MR. CHAMBERS: No, I am going to make a speech. (Laughter.) Gentlemen, I will detain you but a few moments. The fact that taking this issue away from the Supreme Court will relieve them of their congested condition, shows that the Courts of Civil Appeals have erred so often on this one question that more than one hundred cases have been left on the Supreme Court docket now, while less than twenty petitions for writ of error are pending there, which shows that the great majority of cases where the Supreme Court has granted writs of error are cases where the Courts of Civil Appeals have erred in determining whether or not there was evidence to sustain a verdict.

A DELEGATE: Where did you get that information?

MR. CHAMBERS: I did not get the information except from what you gentlemen say about it. The gentlemen who are contending this will relieve the Supreme Court admit that this will take away enough cases from the Supreme Court that they will not be congested with their business. That is an admission that the number of cases that cause this congestion are the cases where the Courts of Civil Appeals have failed to correctly de-

termine whether or not a verdict is sustained by the testimony. Gentlemen, whenever a verdict is rendered that is without testimony to support it, justice has miscarried in that case, and we are weighing and measuring in dollars and cents the value of a miscarriage of justice, and refusing to appropriate money enough to have a Supreme Court to pass upon this as a question of law.

MR. BRYAN: I have not caught the idea that all of these one hundred and odd cases were granted on the ground that there was not sufficient evidence.

MR. CHAMBERS: No, nobody has said that, but the contention is that this will withhold from the Supreme Court cases—

MR. W. D. WILLIAMS: It will help it in part.

MR. BRYAN: Nobody contended that it would relieve it of work altogether, that I know of.

MR. CHAMBERS: That is the idea that I have drawn from this contention about it, that point alone. If that is true, then there have been a sufficient number of cases where justice has miscarried at the hands of the Courts of Civil Appeals, that in my opinion we should not deprive ourselves of the power to have that question reviewed by a higher court. They say the creation of these new courts is adding business to the Supreme Court. I can not understand how that would be, except temporarily, for certainly these gentlemen who have been appointed on these new courts are not fomenting litigation. There will be no more cases tried in the trial courts because of the creation of these new Courts of Civil Appeals, and, therefore, no more cases can go to the Supreme Court, except temporarily. These judges in the new courts will be deciding cases that have already been tried, and the Supreme Court can not get relief until it disposes of the cases already on the docket, but those cases have already been tried. If they are going to foment litigation up about Amarillo and El Paso, we will charge them with champerty and have them disbarred. I believe there ought to be some temporary arrangement by which the Supreme Court could be enabled to catch up with the business, but I believe litigation in this State is not on the increase, and that we are beginning at the wrong end. When we begin to reform the judi-

ciary in this State, we should begin down at the district and county courts, in the trial courts, and endeavor to have satisfaction meted out by those courts, so that so many cases would not be appealed. I believe we might, by having cases submitted on special issue, obviate enough appeals to enable the Supreme Court to handle the business that will go before it. I thank you, gentlemen.

THE PRESIDENT: You have heard the motion on the amendment offered by Judge Lewis. All in favor of the amendment will let it be known by saying aye. All those opposed by saying no. The Chair is in doubt, and all in favor of the amendment offered by Judge Lewis will stand up until you are counted. I count 29. I will take a vote on the other side, but if there is a verification called for we will have it. I count 26 opposed.

MR. HAWKINS: I call for a verification of the vote.

THE PRESIDENT: All who voted in favor of the amendment will please stand, in order to be counted again. I count 29 again. There being 29 ayes and 26 noes, the ayes have it, and the amendment is adopted. The question now occurs upon the adoption of the resolution as amended.

The question being put, the resolution of Mr. Hawkins, as amended by Mr. Lewis, was unanimously adopted.

THE PRESIDENT: The next regular order of business is the report of the Committee on Grievances. Is the report ready on that? I understand there is a report here. In the absence of Judge Shepherd, I will ask that the report be read by the Secretary.

MR. GREER: Do I understand this disposes of all the matter in this printed report, and that you have gone to something else?

THE PRESIDENT: That is my understanding.

MR. GREER: Before that is disposed of, there is one subject I think everybody is prepared to vote on, and that is the advisability of increasing the salaries of the judges of the appellate courts. I do not understand that question has been referred to this committee. It is not necessarily a part of the work they are to perform, and I do not believe they have power to deal with that subject.

THE PRESIDENT: That will come under the head of unfinished business.

MR. GREER: I would like very much to have this subject disposed of, and if the Chair will permit I will read the recommendation on that subject.

THE PRESIDENT: I think that will come under the head of unfinished business from yesterday and would be properly before the house.

MR. GREER: I will read the following resolution:

1. To the end that lawyers of great ability, high character and large experience may in the future, as in the past, be obtained for the Supreme Bench of this State, we recommend that the salaries of each of the judges of the Supreme Court be increased by the Legislature to \$7,500 per annum. We also recommend that a like salary be fixed for each of the judges of the Court of Criminal Appeals.
2. We recommend that the salaries of the several judges of the Courts of Civil Appeals be increased by the Legislature to \$6,000 per annum.

I move that those two features of the recommendation be adopted.

MR. HAWKINS: Before that motion is put, I move an increase of the salary of the Attorney-General to \$6,000, and that of each of the assistants be increased \$1,000. I say that any Attorney-General who is worthy of holding the office ought to receive a salary of \$6,000 a year, and any man who is competent to be an assistant in that office ought to have at least \$3,000 a year, and that the first assistant ought to have a corresponding increase of \$1,000 a year, and I say it is a disgrace to this State that the judges and the Attorney-General and his assistants are not paid more.

MR. GREER: Offer that as a separate resolution. Everybody is in favor of it.

THE PRESIDENT: There does not seem to be a second to the amendment. Is there a second to Judge Greer's motion?

The motion to increase the salaries of the judges, as made by Mr. Greer, was duly seconded and unanimously adopted.

MR. HAWKINS: Then I renew my motion as an independent motion, if the Chair is inclined to recognize it. I make a mo-

tion and ask, if I can get a second, that we recommend that the salary of the Attorney-General be increased from \$4,000 to \$6,000, and that the salary of each of his assistants be increased \$1,000.

A DELEGATE: I second the motion.

MR. W. D. WILLIAMS: I make the point of order that it is not under the present head of business.

THE PRESIDENT: The Chair will have to sustain the point of order. This would have to come up under the head of miscellaneous business unless the motion was made to suspend the regular order of business. This was pending business from yesterday.

MR. GREER: Before leaving this report, I believe, on reflection, that inasmuch as we are instructing this committee about other matters concerning which we have made up our mind, it would not be inappropriate to instruct the committee created to use its influence in obtaining the increases recommended, and that in addition to that the committee be instructed to draft a resolution amending the constitution, increasing the Supreme Court to five judges. That is another feature—

MR. W. D. WILLIAMS: Will the gentleman yield for a question?

MR. GREER: Yes, sir.

MR. WILLIAMS: Would it not put those members of the committee who are members also of the courts in a very embarrassing position?

MR. GREER: I had not thought of that. I withdraw that motion, and I move that the Chair appoint a committee of three members of this Association, not consisting of any members of the courts, to urge this matter.

THE PRESIDENT: That will be new business. If there is a point of order, I will have to sustain it.

MR. DYER: That is not new business. That will be embraced in the report of the committee yesterday.

MR. HAWKINS: I make the point of order that provision is one which is covered by the Constitution.

MR. GREER: The motion now relates to a committee to press the question of increasing the salaries alone. The point was

made that it would be indelicate for the members of that committee who are members of the courts to press such a question, and, of course, it would be a delicate matter. They could not do that. So I move that a committee of three, if there is no objection, be appointed to present that feature and urge it before the Legislature.

MR. WILLIAMS: I second the motion.

The question being put, the motion was unanimously adopted.

THE PRESIDENT: The next order of business is the report of the Committee on Grievances and Discipline.

The Secretary read the report of the Committee on Grievances and Discipline, as follows:

REPORT OF COMMITTEE ON GRIEVANCES AND DISCIPLINE.

To the Honorable Hiram Glass, President Texas Bar Association:

Your Committee on Grievances, Discipline and Professional Ethics beg leave to report:

Since the last meeting of this Association complaints have been filed with your Committee against three lawyers practicing in this State; two of the lawyers complained of are not members of this Association, and your Committee doubts whether its authority to take any action other than to refer the complaints to the local Bar Associations of the counties in which the lawyers complained of reside, if there be local Associations in those counties.

One of the parties complained of is a member of this Association, but your Committee has not been able to make such investigation of the complaint as would justify your Committee to make report thereon.

Your Committee does not deem it proper to report the names of the lawyers herein referred to, as your Committee has not made a full investigation of the complaints for the reasons above stated, and makes this report in order that this Association may determine the extent of its jurisdiction as to the parties who are not members of the Association, and that as to the party who is a member of the Association, further investigation may be made by this Committee in order to enable it to determine whether the names of the parties should be reported to this Association with the result of the investigation.

We respectfully suggest that this Association urge the formation of local Bar Associations throughout the State, so that it may refer complaints against attorneys to the local Associations for investigation, report or action, as the facts may require.

Unless there is a local Association in the counties in which the accused lawyer resides, your Committee is without any effective means for making an investigation, as it can only pursue its in-

quiries through private communications to some member or members of the local Bar, and this is not only embarrassing both to the Committee and its correspondents, but is likewise an ex parte proceeding necessarily lacking in authority, and one that might result in an injustice to the person investigated.

Pending action on this report, your Committee will hold the complaints herein referred to and will turn over all papers relating thereto to its successor, if such be the desire of this Association.

Respectfully submitted,

THOS. H. FRANKLIN, Chairman.

MR. W. D. WILLIAMS: I move the adoption of the report.

The motion was seconded and the motion unanimously adopted.

THE PRESIDENT: The next is the report of the Committee on Deceased Members. I understand there is a report here.

THE SECRETARY: There is a report signed by the committee.

THE PRESIDENT: Will you read the report?

The report of Committee on Deceased Members, read by the Secretary, is as follows:

REPORT OF COMMITTEE ON DECEASED MEMBERS.

Hon. Hiram Glass, President Texas Bar Association.

DEAR SIR: Your Committee on Deceased Members herewith beg leave to submit this report upon the following members of this Association who have died since the last meeting:

Robert Lenox Brown.

DeWitt Clinton Bolinger.

Sam R. Fisher.

L. Q. C. Lamar.

Lewis Blackburn Davis.

Jno. T. Craddock.

Chas. W. Ogden.

W. S. Banks.

Respectfully submitted,

JEWEL P. LIGHTFOOT, Chairman.

WILLIAM SKIDMORE BANKS.

On Thursday night, January 19th, 1911, Judge W. S. Banks, a pioneer citizen of Temple and Bell County, breathed his last, and his sleep became the mystical slumber of the grave. He was thus lost to his estimable wife, his young son, his two daughters just blooming into womanhood, to his numerous friends, to his profession, which he loved so much, and in which he was so proficient, and to his community and country in which he had lived. He had been afflicted but a few days, and his friends were shocked to learn of his

sinking so rapidly under the pneumonia, which he was unable to withstand. That his death caused great sorrow was evinced by the closing of every business house and the schools in the entire community, and a mighty throng attended the placing of his mortal remains in the city of the dead.

William Skidmore Banks was born in Rome, Georgia, on April 28th, 1859. He came from a family of prominent and wealthy Georgia farmers. The Civil War not only claimed a number of victims from his family, but all the property of his parents was destroyed by the great fratricidal strife, and Major Banks, the father, was left penniless. The father, with his two sons, Edward S. and William S., left the old home in Georgia and came to Texas in the 70's and settled down on a farm near Old Independence, in Washington county. William S. Banks, after awhile, by industry and perseverance, entered Baylor College, then at Old Independence, under the management of William Carey Crane. He afterwards attended the Southwestern University at Georgetown; then went to Brenham, where he read law in the office of Swearingen & Swearingen, and was admitted to the Bar in Washington County at the January term, 1882, of the District Court. After a few months he came to Temple, which was then a very small village, but of some promise, and opened his office and began to give his time to preparing himself for the life pursuit of the most jealous of all professions. On April 27th, 1887, he was married to Miss Bene W. Walker, in Belton, and of this union there were born three daughters and a son. All but the second daughter, who died in 1909, survive. The son, William, was attending the city schools in Temple; the daughter Jennie was a teacher in the Temple city schools, and the other daughter, Ara S., was absent from home, completing her education, at the time the father was stricken.

The unexpected death of Mr. Banks has not only covered his town and the entire country with gloom, but the universal esteem in which he was regarded at his home and throughout the county make the event a public bereavement. At the time of his death he was Special Chief Justice of the Court of Civil Appeals of this Supreme Judicial District in two cases; and at various times and on various occasions extending back through a period of years sat as Special Associate Justice of the same court and of the Supreme Court of this State, and all was with distinction to himself and credit to the profession. He practiced before the Courts of Bell, adjoining, and many counties in Texas during a period of nearly thirty years. Whatever he was, he literally made himself, having arisen from the most adverse circumstances in boyhood to a position in which he was recognized as one of the first lawyers of the State. At the age of fifteen years he was working for wages for a tenant farmer on a farm in Washington County; but by sheer force of indomitable will he speedily arose from this beginning and had not been practicing at the Bar

long before he developed a legal mind at once analytical and capable of the highest development. His mental processes, in their voluntary action, were as unerring as logic itself, and in matters requiring clear judgment or on all subjects relating to the proper application of the law, his opinion was much sought and highly regarded when offered.

His great ability, genial disposition, gentleness and modesty of conduct, simplicity of manners, courteous and indulgent treatment toward all with whom he came in contact, whether in the courts, in the office as counsel or amid the walks of private life, endeared him alike to all who knew him, and his rare ability and urbanity of manners compelled the admiration of acquaintances as well as friends. Living as if he believed that gentleness is the loftiest element of greatness, he possessed the faculty to a remarkable degree of the exercise of a sweet-tempered patience that never lost his self-control, whatever the occasion or the cause, and he enjoyed the rare combination of the happy versatility of accomplishments with those of the incisive and logical analysis of much learning in law. He regarded the mastery of the fundamental principles of the law as his field of endeavor, and he early applied himself to the acquisition of a knowledge of those principles and their application to the various business intricacies of the evolution and requirements of business and progress. He never ceased to constantly study the law, and apparently a general investigation of the abstract principles relating to the subjects of pleading and evidence was his great delight. He often remarked to the writer that he was accustomed to examine the advance sheets of reporters on the subjects of pleading and evidence without reference to any particular case in which he might be at the time interested.

Wholly oblivious of the demands made upon him in the practice of an exacting profession, he embraced the occasion often presented, however busy he was, to lend liberally of his vast fund of information to either the young or older lawyers, always manifesting the same keen interest in the discussion of the principle involved in the particular case as if it were his own. In his death, therefore, the younger members of the Bar, and this includes the writer, have been deprived of a friend and counsellor, and the older members of this Bar have been deprived of the benefits of his ripe scholarship and the companionship of the polished gentleman.

Judge Banks established a reputation for fidelity to the interests of the profession for legal learning and splendid ability; for unyielding patriotism; for sound ethical integrity and the choicest sort of professional honor, the remembrance of which will endure in the minds of those to whom he was best known as long as is recalled the ornament to the profession that he was.

It was impossible to know W. S. Banks without feeling for him an admiration and love. His legal mind, so rich and exceptional in

this day, when the tendency is to learn cases instead of principles; his heart so large, big, warm and great; his manners as courteous, soft and kindly, as those of the most even-tempered and cultured woman—he never failed to leave a deep impression upon those with whom he came in contact in the trial of a case. His life was one of constant action. While his clients visited or sojourned often for pleasure or health in other parts of the country, he remained at home, attending to their affairs and enjoying a large practice; he was always engaged in the exacting requirements of professional effort. He bore no malice; his heart was full of the milk of human kindness. He was generous to those who opposed him, while he exhibited much loyalty to his personal friends, and at the same time made the cause of his clients that of his own. It may be said of him that he was a lawyer of extensive and profound accomplishments; that he possessed a mind of rare powers of analysis; that he was a man of unsullied honor; that he loved his country and his people, and that his generosity knew no bounds. He will be remembered as no commonplace lawyer, but one whose mind and talents preferred to dwell in the "mountain ranges of the law."

MEMOIR OF R. L. BROWN.

Mr. Robert L. Brown, a member of the Texas Bar Association for twenty-five years, died at his home in Austin, on November 9, 1910.

Mr. Brown was born in the town of Duns, Berwickshire, Scotland, in January, 1842, and his youth passed among the scenes made familiar to the world by border legend and song. He was educated in Oxendean Academy, and his first business experience was acquired in a bank. Later he removed to Glasgow, where he studied law with the firm of McClure, Naismith & Brodie, lawyers of that place, and, being admitted to the Scotch Bar, pursued the practice of his profession there until his removal to America in 1882.

Mr. Brown was a man of many and varied interests and active in the intellectual culture and social life of the old University city. He became a Captain in the Glasgow Volunteers, was Secretary and Treasurer of the Mechanics' Institute, a member of several musical societies, and a close observer and participant in the various movements which have caused the municipal administration of that famous city to attract the attention and study of the world.

Coming to America, he settled in Austin, Texas, in 1882, and became a member of the Texas Bar. He did not, however, engage in general practice. Having located here as the representative of some Scottish and English companies extensively engaged in loaning money upon real estate securities, the responsibilities of this business commanded his chief attention. His occupation became rather that of a private banker, than of an attorney.

His interest in the Texas Bar Association, of which he became a

member in 1885, was largely that of one greatly concerned with the problems of government and judicial administration, of which he was a student. He attended many of its meetings and watched its discussion of such questions with keen interest. It is a matter of regret that his modesty kept him, for the most part, a silent listener to these debates. Only his intimate friends, with whom he was accustomed to freely exchange views on such subjects, knew how much of value might have been contributed by his acute and brilliant mind, his original and unconventional way of thinking and of presenting his thoughts and the breadth of his knowledge and observation derived from a comparison of our own institutions and methods with others, widely different but equally familiar to him.

A man of substantial means, liberal and public-spirited, of good business capacity, and unimpeachable integrity and unspotted life, he attained a place of prominence in his adopted city. His attachment to the interests of the State University and of the Episcopal Church, of which he was an active member, were specially marked. His death came suddenly. He was passing the afternoon at home, complaining of some slight indisposition. After luncheon he seated himself at the piano to practice the scores for a church entertainment, which his special familiarity with the masterpieces of ecclesiastical music had led him to take an interest in promoting. The melody ceased, and soon after he was found by the family, sitting dead in his chair in the music room.

Mr. Brown's memory will be long cherished by a circle of devoted personal friends. His house was noted for its hospitality. He was a great entertainer and a charming host, whose wit, sense and geniality enlivened and refined the welcome he was so fond of extending to his friends. Those who had the privilege of intimacy with him will long feel the loss from their own lives by the passing of so fascinating and so unique a personality.

We venture to add in closing this brief memoir the following words of appreciation from a sermon preached by the bishop of his diocese upon the Sunday following his death:

"A man of conspicuous integrity in his business relations with his fellows, a most genial and whole-hearted host in his home. No one in our city was more lavish and unstinting in that gracious and beautiful virtue of hospitality. How brilliant and entertaining he was in all his social-intercourse! I never met him without his letting drop spontaneously and quite unconsciously some original and sparkling witicism, or a thought on some subject which reached deep into the roots and foundations of things. He possessed a strong personality, and was outspoken in his opinions and estimates of men and manners, and measures and customs and ways and habits. His independence and freedom from conventional and arbitrary notions was one of his marked and chief charms. And his versatility of mind was no less attractive. He could converse intelligently on the greatest variety

of topics, from single income tax up to art, and music and architecture, and even church liturgies and theology, and that, not with a mere superficial knowledge, but with acumen of insight and enlightening information. He drew around him many of our most cultivated and thoughtful citizens, and they appreciated and loved him as such men only love the choice and exceptional spirits among their kind."

DE WITTE CLINTON BOLINGER.

De Witte Clinton Bolinger was born in St. Paul, Arkansas, on the 29th day of June, A. D. 1856. He came from the best Southern blood. Like the sons of many Southern families, impoverished by the war between the States, and moved by that ambition that the sons of the South aspire to, and that industry that few possessed, after educating himself by his own exertions and the facilities afforded by the country schools, he began life as a teacher. It was while teaching that he devoted himself to his studies most. He believed in a broad education, and that one's success in life depended upon laying a deep and broad foundation, to succeed in that profession which was his earliest dream, and in which he wielded the keenest of blades in later life.

His ambition led him to Texas, a State he loved, and for which he predicted in the early future the leader of the States. He began active life in Waco. The writer remembers vividly his towering, well-built frame and handsome face on the day he landed in Waco, and how he plodded thereafter, day and night, in the pursuit of his profession. It was not long after he entered the practice of law that success followed. Many encouraged him, for there were many who recognized in him the promise of a great future. He was modest, gentle and refined, rather retiring in his disposition. He was honest with his clients, their battles were his, he wept with them in their losses and rejoiced with them in their triumphs. His unswerving honesty and fidelity to the right made him a partisan for his clients, but he was always broad enough to steer them aright. He was courageous if need be, and the uncompromising foe of professional dishonor.

That "stalwart" did not dwell among us long until he yielded to that to which man is a slave, the smile of woman. Her name was Miss Earl Harrison, whom he married on the 27th day of March, 1884, in Waco, Texas, the home of her father, who was the lamented General James E. Harrison, of "Southern Confederate fame," and of one of the best families of this country. His married life was a happy one. It was commonly said of him that no one took a greater interest in the advancement and happiness of his family; nor could one of his means have been more liberal.

Among his first legal duties were those performed for the Missouri, Kansas & Texas Railway Company of Texas, in condemnation suits in McLennan and Bell Counties. His services soon attracted the attention of that great law firm, then Baker, Botts & Baker, who, always

on the lookout for bright lawyers, tendered him employment as a trial lawyer in a considerable district, and it was while engaged in this employment that he attracted more attention. As a trial lawyer his success was phenomenal. The record he made in the trial of a case if he lost in the court below uniformly resulted in its reversal in the appellate court. He was a great favorite of two of the leaders of the then Texas Bar, Judge L. C. Alexander and George Clark of Waco. They saw in him the elements of true manhood and a great lawyer, and he in return was fond of them. It was not a difficult task for him to return to Waco, his first love in Texas, and especially upon being tendered a co-partnership with the State-renowned firm of Clark & Dyer, of Waco, which he accepted, and with whom he enjoyed a lucrative practice for many years. Still greater things awaited him. The Southern Pacific Railway Company looked all over the State for a lawyer to cope with the leading damage suit lawyers of the State, and it chose him, and his last move was to San Antonio, Texas; and how well he filled this responsible position there are many who can attest. It was common rumor that this great railroad system was so pleased with his services that it was soon to beckon him to New York, the metropolis that has made great lawyers great, and when nearly in the zenith of his profession, Death, seemingly jealous, took him to its city. It can not boast of taking a more worthy man from the legal profession. He died on the 1st day of September, A. D. 1910, while sojourning with his loving wife in the mountains of Colorado. The writer would love to inscribe upon his tomb: "Here lies a Southern gentleman and a great lawyer."

LUCIUS QUINTUS CININNATUS LAMAR.

Lucius Quintus Cincinnatus Lamar died on the 26th day of December, A. D. 1910.

Mr. Lamar was born at Oxford, Mississippi, on December 15th, 1880. His father was the son of L. Q. C. Lamar, late United States Senator from Mississippi, member of President Cleveland's Cabinet, and afterwards Associate Justice of the Supreme Court of the United States.

His mother was Kate Lester Lamar, now Mrs. W. L. Crawford and the daughter of Dr. L. J. Lester, a famous surgeon in the Confederate service.

Mr. Lamar received his schooling in the public institutions of Washington, D. C.; Dallas, Texas; Paris, France; Heidelberg, Germany, and the University of Texas, graduating from the latter institution in 1901 with the degree of Bachelor of Laws.

After receiving his degree at the State University he returned to Dallas and was associated for a time in the practice of law with W. L. Hall. In 1902 he served as Assistant County Attorney of Dallas County by appointment of Hatton W. Sumners. After retiring from the County Attorney's office, Mr. Lamar entered the general practice

of law and later formed a partnership with Col. W. L. Crawford, under the firm name of Crawford & Lamar, which connection he retained until ill health forced him to retire from active practice.

He served as Secretary of the Texas Bar Association for three years, declining re-election in 1909.

In 1906 he married Miss Mary Page Adams, who was the daughter of Mrs. Ora Page Adams and the late Col. W. S. J. Adams, of the Confederate service, a prominent Texas lawyer, and at one time on the District Bench. His wife and one child, a little girl two years old, survive him.

He was learned. Having pursued his studies with distinction in the schools he entered, he continued in after life to add knowledge by reading, travel and research, and before his death contributed valuable articles to the press both on economic and legal subjects.

He was proud. Coming from a distinguished Southern family, he was free from vanity, yet cherished its traditions and character, and prized most highly its accomplishments and endeavored to shape his life so as to be worthy the name he bore.

He was tolerant. His education and travels had taught him to respect the beliefs and rights of others. He despised sham and hypocrisy, and considered intolerance one of the greatest of all sins.

He was true. He was true to the highest ideals of his profession, true to his friends, his city and his State, true as a son, husband and father, possessing a veneration for his mother and an affection for his wife and little daughter which was sacred.

He was able. Though in the morning of life, and though subject to the limitations of poor health, he proved himself worthy of the best steel of his opponent in every arena that he entered.

He was brave. Realizing the assault which disease was making upon his life in strange lands and among strange people, he battled for its prolongation. Through all the fight his heart was cheerful, and to the passer-by, to the comer and to the goer, there was no indication that the battle was about to end. He fought bravely to the last.

His loss has removed one of the ablest of its youngest members—a man whose achievements and promise seemed to have marked him for the first place in his profession. One whose uniform courtesy and lovable character has endeared him to all men with whom he came in contact.

LEWIS BLACKBURN DAVIS.

Lewis Blackburn Davis was born in Pickens County, South Carolina, on January 6, 1845. At an early age he removed to Georgia, where he was educated at King's Institute, at Cedartown, in that State, and continued to reside there until 1863. At that time, while yet a mere boy, he enlisted as a private in the Confederate army, being assigned to the Twenty-first Georgia Infantry of the Army of Northern Virginia, and rendered active and gallant service in nearly

all of the famous battles in which that great military organization participated after the time of his enlistment. At the second battle of Manassas he was severely wounded, losing two of the fingers on his left hand, but rejoined his company after his recovery, and continued to serve until the end of the war. In December, 1867, he came to Texas, first locating near Red Oak, in Ellis County, where he worked on a farm. He afterwards removed to Johnson County, and in the early part of 1870 came to Cleburne and began the study of the law, receiving his license and being admitted to the Bar in August of that year, and from that date until a few days before his death was actively engaged in the practice in Cleburne, being the oldest practitioner at the bar of that county at the time of his death.

In 1874 he formed a partnership with S. C. Padelford, which continued for some time. He later formed a partnership with Captain O. T. Plummer, and afterwards with the late Captain Tillman Smith, which continued until the latter's removal to Fort Worth. He was afterwards associated for some time with Judge W. D. McCoy, and in 1903 formed a partnership with his son, J. M. Davis, which continued until the date of his death. On May 17, 1876, he was married to Miss Cora Mitchell of Cleburne, three children being born to them, two of whom are living.

In his private life L. B. Davis was a man of exemplary habits and conduct, with a fearless, honest, rugged character, always ready to champion the cause of right and justice as he conceived it. In his practice he had the highest conceptions of the ethics of his profession, to which he adhered most scrupulously; a close student, hard, painstaking worker, he left nothing undone to serve his client in every proper way, but took dishonorable advantage of no man; and while few lawyers were more zealous, determined or tenacious in the prosecution of their cases, it can be truly said that there was not a stain upon his record of forty years, and that none of his brethren of the bar bore him malice or ill will. In his personal relations he was most pleasant and affable, and always showed a marked interest in young men, particularly the younger members of his profession, and was seldom too much engrossed in his own affairs to assist them in their work and lend them encouragement. As a citizen, he had a high sense of civic duty, and while seldom an aspirant for public honors, was always outspoken in his advocacy of good government and political purity, regardless of his personal friendship. During the early years of this Association he became a member and continued to take an active interest in its affairs until the time of his death.

SAMUEL RHOADS FISHER.

On February 12, 1911, at his home in Austin, Texas, one of our most honored and eminent members passed away. Samuel Rhoads Fisher was a son of Samuel William Fisher and grandson and namesake of S. Rhoads Fisher, Secretary of the Texas Navy, and was born Decem-

ber 12, 1849, in Matagorda, Matagorda County, Texas. After completing his primary education in local institutions, he graduated from Washington-Lee University in Virginia, in 1872, receiving both literary and law degrees. He came direct from college to Austin, Texas, where he was admitted to the Bar February 26, 1873, and continued in the practice until the day of his death. He had a long and eminent career at the Bar, participating in the trial of some of the most important cases decided by our courts. He was formerly associated with Hon. A. J. Peeler and T. S. Maxey, under the firm name of Peeler, Maxey & Fisher. Thereafterward an association was formed with Judge John C. Townes, and for a period of fifteen years he was a member of the firm of Fisher & Townes. At the date of his death he and his son, S. W. Fisher, were engaged in the practice under the name of Fisher & Fisher. He was a man of strong intellect and indomitable energy. He quickly discerned the right and faithfully plead the cause of justice. His whole professional career was marked by ability, conservatism and rigid adherence to the highest principles of citizenship. In the daily walks of his life he was affectionate to his friends and considerate of all. He was kind, gentle and sympathetic. Nature made him a gentleman. His was a beautiful life of duty to home, country and God, and in his passing we can but feel that

"The dead are like the stars, by day
Withdrawn from mortal eye
But not extinct, they hold their way
In glory through the sky;
Spirits from bondage thus set free
Vanish amidst immensity.
Where human thought like human sight
Falls to pursue their trackless flight."

JNO. T. CRADDOCK.

On Tuesday, March 21, 1911, at 12:30 a. m., at his residence in Greenville, Texas, Jno. T. Craddock departed this life after a lingering and exhausting illness that extended through months and months of continuous suffering.

Mr. Craddock in his early life took high rank as an accurate, thorough, painstaking lawyer, which rank he maintained throughout his career. After a few years' practice in Wood County, his home at the time, he was appointed by Attorney General James Stephen Hogg, one of his assistants, which official position he was holding at the time the Attorney General was elected Governor, Mr. Craddock having successfully managed the campaign in which he was elected. Without attempting any statement of the political affiliations and sympathies of Mr. Craddock, the fact that he was selected by that great patriot to be one of his associates to assist in administering the affairs of

the great office of Attorney General is an earnest and sufficient proof to the people of this entire State that he was deemed to be a Democrat, clean in all practices and in full accord and sympathy with the great masses of the people. He came to Greenville nearly twenty years ago as general attorney for Hon. W. S. Giles, receiver appointed at the instance of the State of the Old East Line Railway. Serving through the receivership in this capacity, he became general attorney of the reorganized company, the Sherman, Shreveport & Southern, and after its consolidation with the Missouri, Kansas & Texas Railway Company, he continued with the latter company to the date of his death and was prized as one of its most valuable trial lawyers.

In all the walks of life, official position, practitioner at the Bar and in his business and social relations his well-ordered, logical mind, and generous, unselfish nature beautified and adorned his every act. He spurned the tricks and small arts of the shyster. His contests were fought on the high plateau of truth, appealing alone to the aroused conscience and enlightened judgment of judges and jury.

He will be remembered by us longer, and the example of his life to all of us will be most valuable because of his unquestioned honesty and uprightness, under all circumstances, and his big-souled, generous, guileless nature.

A broad charity seems to have pervaded his conduct and disposition everywhere and in all relations, and it was this that staunched all bitterness and compelled respect and admiration, if not affection, from almost every one who knew him.

In a pre-eminent degree he loved and cared for his family, and no man was more faultless in discharging the duties of this sacred relation.

His life was one of service, arduous, faithful and valuable; laboring ceasing, in the grip of the Grim Destroyer, knowing that the end was not far off.

In the death of Jno. T. Craddock the Bar of Texas has lost one of its honored and distinguished members, irreproachable in character.

CHARLES W. OGDEN.

On April 19, 1911, Chas. W. Ogden died suddenly in the city of San Antonio, Texas.

He was born in Port Lavaca, Texas, April 8, 1852. His entire life was spent as a practicing lawyer. He was an industrious student and kept pace with the progress of the law as enacted by National and State Legislatures, and announced by the decisions of the courts, so that he was equipped for the work of a thoroughly competent, faithful and conscientious practitioner. He always maintained the highest ideals of his profession and was distinguished not only for his superior attainments and ability, but as well for that gentlemanly courtesy and honorable deportment which

made him a general favorite with the professional brethren. He was a good fighter, but he always fought fairly and in the open, and ever maintained the doctrine that enunciation of correct principles of right, justice and law is of greater importance than any temporary advantage obtained by any litigant in the winning of any special case. He was a manly man, with a big body, a big brain and a generous, noble heart. As a citizen, he was a patriot. While he maintained his political principles as a partisan and was active always in their advocacy, he was never personally offensive to those with whom he differed, and was always tolerant of their opinions, recognizing their rights as equal to his own. As a friend, he was always loyal and true. As a husband and father, he was loving, kind and indulgent, carrying into his home and the education of his sons the same high ideals which actuated him in his professional, public and social life.

THE PRESIDENT: Unless the Association especially wants it we will not have the memorial read. They are lengthy, and they will be printed in the proceedings. Is there a motion?

MR. W. D. WILLIAMS: I move the adoption of the report, and that it be printed in the proceedings of the convention.

The motion was seconded and unanimously adopted.

THE PRESIDENT: The report of delegates to the American Bar Association. I do not believe there is a report here. Then there is the report of a special committee to increase salaries of judges. Is there any report from that committee?

MR. WILLIAMS: We have acted on it if there is.

THE PRESIDENT: The next is unfinished business: I believe we passed yesterday the reports of the Secretary and Treasurer.

MR. WILLIAMS: The reports of the Secretary and Treasurer were passed yesterday because they had not been examined and approved by the Board of Directors. They are now in readiness to present. The report of the Secretary probably should precede the report of the Treasurer.

The report of the Secretary was read, as follows:

REPORT OF SECRETARY.

AUSTIN, TEXAS, July 1, 1911.

*To the President and Board of Directors of the Texas Bar Association.
Waco, Texas.*

GENTLEMEN: Your Secretary respectfully submits the following report of his official transactions since July 1, 1910:

Your Secretary collected and received from 89 new members
 at San Angelo, as initiation fees and dues (\$5.00 each)... \$ 445 00
 By collections, due from members from June 28, 1910, and
 including June 24, 1911, as shown by stubs of receipt books
 and entries to the credit of members and deposits in bank. 625 00
 By the sale of copies of Proceedings..... 49 00

Total \$1,119 00

Against which your Secretary takes credit as follows:

Paid the Treasurer as per his receipt attached..... \$1,119 00

Your Secretary reports that the Proceedings for the year 1910 have been printed and have been mailed to the members of the Association, as well as to the different State Bar Associations.

Cloth-bound copies were furnished to the members in good standing, and the permanency of the binding should make the Proceedings more valuable.

The membership at the 1910 report totaled..... 543
 New members added at San Angelo meeting, 1910..... 89

Total 632

Dropped from the rolls..... 4

Dropped by death..... 8— 12

Total membership July 1, 1911..... 620

Respectfully submitted,

J. B. CAVE, Secretary.

Approved:

ALLAN D. SANFORD,
 JOHN T. DUNCAN,
 MARSHALL SPOONTS,
 W. T. BARTHOLOMEW,
 Board of Directors.

\$1,119.00.

AUSTIN, TEXAS, July 1, 1911.

Received of J. B. Cave, Secretary of the Texas Bar Association, the sum of one thousand one hundred and nineteen dollars, being the amount collected by him from June 28, 1910, to June 24, 1911, for the Texas Bar Association.

WILLIAM D. WILLIAMS,

Treasurer.

JUDGE KITTRELL: I move the adoption of the Secretary's report—that it be approved and adopted.

The motion was seconded and unanimously adopted.

MR. WILLIAMS: Without taking the time of the Association

to read the items of disbursements, which will be printed in the proceedings. I will state the total receipts for the year, etc.

The Treasurer thereupon stated the totals shown in the report. The report in full is as follows:

REPORT OF TREASURER.

AUSTIN, TEXAS, JULY 1, 1911.

*To the President and Board of Directors, The Texas Bar Association.
Waco, Texas.*

GENTLEMEN: I beg to submit to you my report as Treasurer of the Texas Bar Association, showing receipts and disbursements since July 4, 1910, and the amounts of money then and now in the Treasury of the Association as follows, to-wit:

July 4, 1910—Amount on hand as per report of that date....	\$1,986 49
July 1, 1911—Amount received from Mr. J. B. Cave, Secretary	1,119 00

Total	\$3,105 49
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July 7, 1910—Expenses of Vice-President Saner, arranging for San Angelo meeting.....	\$ 35 00
July 7, 1910—Paid for entertainment Hon. Geo. R. Peck at San Angelo meeting.....	100 00
September 20, 1910—Paid for reporting proceedings San Angelo meeting	65 30
December 7, 1910—Telegrams.....	1 65
January 7, 1911—Floral design for former Secretary, L. Q. C. Lamar	10 00
January 20, 1911—Printing Proceedings 1910.....	379 35
February 18, 1911—Cost distributing Proceedings, etc.....	5 00
May 22, 1911—Sundry express charges.....	6 13
June 17, 1911—Postage stamps at this and sundry prior dates	77 50
June 25, 1911—Secretary's salary.....	120 00
June 28, 1911—Stationery and printing at this and prior dates	30 05

Total disbursements	\$ 829 98
Balance in Treasury.....	\$2,275 51

Total	\$3,105 49
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Vouchers representing the disbursements are submitted with this report.

The receipts for the year are \$289.02 in excess of the expenditures. All of which is respectfully submitted.

WILLIAM D. WILLIAMS,

Treasurer Texas Bar Association.

July 4, 1911—Examined and found correct.

R. E. L. SANER,

Acting Chairman;

ALLAN D. SANFORD,

W. T. BARTHOLOMEW,

MARSHALL SPOONTS,

Board of Directors.

On motion, duly seconded, the Treasurer's report was unanimously approved and adopted.

THE PRESIDENT: That brings us to miscellaneous and unfinished business.

JUDGE KITTRELL: I offer the following resolution:

"Resolved, That the Bar Association of Texas recommend to the Legislature of Texas the enactment of a law amendatory of the practice and procedure act, empowering trial judges to submit any case pending before them upon special issues, if in their judgment such method of submission be practicable and calculated to promote the more speedy and definite determination of issues involved."

I desire, preliminary to and in connection with the offering of this resolution, to state that it is the consensus of opinion of the legal profession in my county that a case can not be properly submitted to a jury upon special issues, unless upon the request of an attorney for one side or the other. If objected to, it can not be submitted. That is the construction given to the law under the decisions as it now stands, and it has been followed by me, and, so far as I know, by my colleagues in Harris county. I submit to this body of lawyers, representing the legal profession of Texas, that in my judgment there is no amendment to the practice act in this State that will so far reduce the number of appeals without injuring or doing injustice to any litigant, as to make it obligatory upon the judges, or, at least, give them discretion to submit cases upon special issues. This with me is not a theory at all. It is the result of no little experience. A majority of the cases in the Sixty-first District Court are submitted upon special issues. The lawyers have

kindly consented to it in the majority of cases, and if I had time I could name the cases and the questions involved. That is now impossible, but I will state that two-thirds of the cases so submitted have not been appealed. The results have been accepted. The special issues are preceded by an explanation of the law applicable to them. For instance, in a case where the question is whether or not a contract has been substantially performed or not, they are informed what substantial performance means, and then are asked: "Do you or not find that the plaintiff (or defendant, as the case may be) substantially performed his contract?" And other questions are asked in that way. There are counsel present here today who have tried cases in that method, involving no small amounts, but large amounts, from which there was no appeal. In three or four or five cases in succession the result was accepted, and the case thus ended. There is another reason. Every trial judge will recall, and you know, that it is impossible for any trial judge, however able he may be, to rightfully pass upon and determine the complicated questions of law presented to him in the haste and hurry of a trial. As a concrete illustration, there came before me some two years ago a case which presented more complicated and difficult questions of land law than I had ever seen before in my life. It was managed on both sides by counsel of unfaltering zeal and of marked ability, and the case proceeded for two or three days. I submitted it upon special issues. I said, "Gentlemen, now at your leisure we will take up these issues and thrash out the issues and see what the law deducible from them is." Off and on for two or three weeks, as the business of the court permitted, the counsel came before me, and that case was thrashed out fully, and a judgment reached which was affirmed. Yet I think the chances are nine out of ten that had I been called upon to pass upon those difficult questions, without opportunity to examine the authorities, there would have been error committed in that case that would have been fatal to it. In another case it was so difficult that I set it aside once—a very difficult case, fought by able counsel, and the case was carried to the Court of Civil Appeals, and they affirmed it, and then even after that the Supreme Court granted writ of error, and then

it was argued again, and the Supreme Court affirmed the judgment of the lower court and the intermediate court. When I have tried a case submitted on special issues-distinctively I have never yet had a jury to hang, or differ, or divide, or disagree, upon any of the issues submitted. They have answered every question, sometimes as many as thirty of them in a case, and the results have been most gratifying. I say to you that in my judgment one-third, if not one-half, of the appeals in Texas will be avoided if you will make it obligatory to submit cases upon special issues.

THE PRESIDENT: Your resolution does not make it obligatory?

JUDGE KITTRELL: No, sir. It leaves it in the discretion of the court.

JUDGE JENKINS: I would like to have a reading of the resolution. I did not catch it.

JUDGE KITTRELL: I will read it again. I have no pride of opinion about whether it is obligatory or left to the discretion of the court. I do not know that it is very happily worded.

The resolution was reread by Judge Kittrell.

JUDGE JENKINS: I desire to say a word in favor of that resolution. I will read from the proceedings of the last Bar Association a resolution of similar import.

MR. CHAMBERS: Will you let me offer an amendment, so that you can discuss them both together?

JUDGE JENKINS: Yes, sir.

MR. CHAMBERS: I move to amend by substituting the word "directing" for the word "empowering." I move that as an amendment.

JUDGE KITTRELL: I accept it.

JUDGE JENKINS: I really believe the language of this resolution will cover the ground (reading): "Resolved, We favor such an amendment to the statute as shall require the trial judge to submit all issues in cases where a jury is empannelled on special issues, unless with the consent of both parties to the suit he prefers to charge the jury as under our present law." I believe it ought to be made obligatory upon the judge unless by consent of all parties.

THE PRESIDENT: Do you offer that as a substitute?

JUDGE JENKINS: I will offer that as a substitute. I believe it is more to the point than the other. Will you accept this?

JUDGE KITTRELL: Certainly. Anything that will reach the end I am willing to have passed.

JUDGE JENKINS: Now, a word as to this mode of procedure. Judge Kittrell has given you his experience as a trial judge. Of all the men in our system of jurisprudence, the man who has the least chance to administer the law correctly is the trial judge. I have never occupied that place permanently, though I have tried a number of cases as trial judge. I think those lines from the Pike County Ballad apply, that "He ain't never had no show." If you will require issues to be found by the jury as issues of fact, then the only question will be whether the trial judge, with the assistance of the attorneys for each side, is capable of applying the law to the facts. In my judgment, this will cut off many appeals. Somebody quoted me as saying thirty-five per cent. I think that is a very small percentage. We know how a man is disposed to fight his case, and when he loses it he says to his attorney: "That judgment is not right. They swore lies, and I want to fight her through." But an honest lawyer will say: "Well, perhaps they did swear lies on you, and I believe your statement of it, but the other side swore the other way, and the court has submitted that to the jury, and they have found against you, and the Court of Appeals will not disturb the verdict on the preponderance of the evidence, and it would be folly to take your case up." Under our system the jury necessarily incidentally largely passes upon questions of law, and yet a jury was never designed for any purpose except to find the facts. They are the judges of the facts and the credibility of the witnesses, and they have no place in our system for anything else, and it ought to be separated from everything else, and put up to a jury where they can answer yes or no. Then you get a verdict pretty generally relieved from the passions and prejudices of the trial, because, as Judge Kittrell says, they do not disagree. When you put it up to them, "Is this a fact or not?" they are liable to find it as it is. Aside from that question, I want to call attention

to my experience on the Court of Appeals as to the aid this will give. In the first place, the case comes before the Court of Civil Appeals, and there are three or four issues upon which they might have found for the plaintiff or the defendant. The court misdirects the jury as to one of these. They return a general verdict. Then the Court of Appeals can not say upon which of these issues they have found a verdict, and they can not say it would not have been different but for the wrong direction upon that point, but if the jury had found that point, and they had found in favor of the party against whom the erroneous charge was given, it would be out of the case, and the Court of Civil Appeals could then apply it to the facts found. This frequently arises that there are three or four issues upon which a jury might find one way or the other. There is a general verdict, a general judgment, and the result of it is the case must be reversed when otherwise it might be affirmed, or it might be reversed and rendered. Take by way of illustration a very common case of a personal injury suit. The plaintiff alleges negligence on the part of a railroad company. The railroad company replies, "Contributory negligence," and the plaintiff replies, "Discovered peril." The court misdirects the jury on one of those issues, say on the question of discovered peril, but the jury find that the facts raise that issue against the party who received the favorable charge. He has no right to complain. It is out of the case. Or it may be upon contributory negligence or otherwise, as the case may be. It would not only relieve the trial court, but it would relieve the Court of Appeals, and they would be able to dispose of a greater number of cases than they are now able to dispose of, and they would be able to affirm, or to reverse and render, instead of sending the case back to be retried, when they know what the facts are upon which the jury found their judgment. I trust that this will pass. It did pass at the last meeting unanimously, and I trust that the resolution will be adopted by this body.

The resolution as stated by Judge Jenkins was seconded and unanimously adopted.

MR. HAWKINS: I offer this resolution:

"Resolved, That we recommend to the Legislature the submission of an amendment to the Constitution of Texas permitting the Legislature to provide a salary of \$6,000 per annum for the Attorney General, and that the Legislature then increase his salary accordingly, and that it also increase the salary of each of his assistants one thousand dollars per annum."

I had the honor for something over four years to serve in that department, and no man ever heard me during that time suggest an increase in my salary. I did not feel free to do it. I accepted the position with that salary attached, and I did not feel free to ask the Legislature to increase it, and I never made a suggestion to a living man in the Legislature on the subject. But I know from experience that the salaries paid in that department are entirely out of proportion to the work and responsibility involved, and I want to see those salaries increased, along with the salaries of the judicial officers of the State—the appellate judges. The Attorney General is the chief law officer of the State, clothed by law and by the Constitution with vast powers, and charged with great responsibilities, and he is as much entitled to a salary of \$6,000 a year as any judge of the Court of Civil Appeals. We are paying \$4,000 now. The Constitution limits it to \$4,000—\$2,000 in salary and \$2,000 in fees. It would require a constitutional amendment to increase the salaries. There are several assistants. Some of those assistants handle a great volume and a very responsible character of business. For instance, the second assistant passes on the validity of bonds, I think running now probably to about \$9,000,000 per annum, on a salary of \$2,000 per year. I will undertake to say that in the last five years the first assistant in the office of the Attorney General has handled more legal questions of great importance, and has handled more litigation, than any other man south of the Mason and Dixon line on a salary of \$2,500 a year.

THE PRESIDENT: In view of that suggestion, wouldn't it be well to cut out a recommendation to the Legislature to increase the salary of the Attorney General?

MR. HAWKINS: I say, then, increase it. In other words, first amend the Constitution so as to permit it.

THE PRESIDENT: Oh, yes. I beg your pardon.

MR. HAWKINS: I have no personal interest in this matter, of course, but I feel it is a matter which ought to receive the careful consideration of the Bar Association of Texas. While you are on the subject of the increase of salaries of judicial officers, I heard some suggestion about passing over this political matter. I do not regard the office of Attorney General as a political office. It is the great law office of the State of Texas. It ought always to be divorced from politics, and whenever and wherever politics creep in it is a great reflection upon the incumbent and a great misfortune to this State. The presumption is that politics have no place in that office, and the rule of the office has been that politics have no place in any part of its work. I feel that we do ourselves an injustice when we hesitate to endorse a proposition to increase the salaries of those men. I call for a vote on the resolution and move its adoption.

The motion was seconded.

A DELEGATE: Would you accept an amendment to the effect that they abolish the fees connected with the office?

MR. HAWKINS: Yes, I am in favor of abolishing every fee of every officer in Texas from A to Z, and I think it would be very proper to abolish fees there, so far as they enter into the compensation of the office. There are certain fees, but they ought not to go into the salary account. They ought to be turned into the State Treasury.

The resolution by Mr. Hawkins was unanimously adopted.

JUDGE KITTRELL: Gentlemen, I want to offer another resolution. You will probably not adopt it, but it is my own convictions about what ought to be the law of Texas.

"Resolved, That it is desirable that the statutes relating to practice and procedure should be amended so as to give to any party to any suit in the trial courts of Texas the right to appeal upon questions of law from orders setting aside verdicts and granting motions for new trials."

This is without precedent, but precedent and progress are

absolutely irreconcilable terms. If we are to progress and dispose of the business of this State, we must get out of the ruts we have gone in for the last fifty years. There is not a lawyer within the sound of my voice who has not fought perhaps for one day, or two days, or three days, or a week, and won a just and righteous verdict, and then been robbed of the fruits of his victory by the stupidity of some trial judge. I had rather try every case on the docket of the Sixty-first District Court than to pass upon one hotly contested motion for a new trial, because if I grant it I am just as apt to err in granting it for the reason that I admitted some evidence that ought not to have been admitted, or delivered some charge or refused some charge, as I am to err in anything else. Yet if I grant that motion where the very matter would be determined to be right on appeal, I have taken from some man a justly deserved verdict and defeated the right of some litigant. Every day almost when the Supreme Court meets you see this order: "The judgment of the Court of Appeals is reversed and the judgment of the District Court is affirmed." That means that if the District Court had granted a new trial, as was insisted upon in the court below, he would have erred, and I think we ought to have a law here as it is in Missouri. The other day I was reading a case from Missouri that illustrates my position. A woman sued for \$5,000 on an accident policy. The sole question in that case was whether the death of the husband was an accident within the meaning of the terms of that policy, a question for the construction of the terms of by the court. The jury returned a verdict in the woman's favor for \$5,000, and the court set it aside. She did not sit down, as she would have been obliged to do in Texas, and accept the decree of the judge as a finality. She appealed from that order, and the Supreme Court of Missouri directed that the trial judge reverse his action and directed him to reinstate that judgment and give her her money back. In Texas she would have been obliged to sit down and the judge the next time might have done the same thing. I do not mean to appeal upon questions of fact, but I do upon questions of law, and every litigant ought to have the right to appeal from the order of a trial judge to the Supreme

Court, and see whether that order was right or not. I wish for my part as a trial judge that it was the law today.

The motion was seconded.

MR. LEWIS: Is there not a rule that requires matters of that sort to be referred to a committee?

THE PRESIDENT: I do not find it. If there is I would be glad if you would call my attention to it.

MR. LEWIS: I was under that impression. Judge Townes, do you remember?

JUDGE TOWNES: I do not remember any such rule.

MR. KELLY: I feel like that is one of the questions that we are not prepared to express our views on without thinking a little bit about it, and for that reason I move that the resolution be referred to the committee which is to report at our next annual meeting.

The motion by Mr. Kelly was seconded and was adopted by viva voce vote, and the resolution ordered referred to the committee of nine to be appointed by the President.

THE PRESIDENT: Is there any other unfinished business? If there is no unfinished business the nomination——

MR. SPOONTS: Just a moment. I have the following applications for membership to the Association:

WACO, TEXAS, JULY 5, 191.

Hon. Hiram Glass, President Texas Bar Association.

DEAR SIR: The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association, and the Board of Directors having fully considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

H. A. Cline.....	Wharton
S. A. Lindsey.....	Tyler
J. J. McClellan	Corsicana
J. Lee Gammon.....	Waxahachie
A. M. Frazier.....	Hillsboro
D. M. Prendergast.....	Waco

Respectfully submitted,

W. T. BARTHOLOMEW,
JOHN T. DUNCAN,
MARSHALL SPOONTS,
ALLAN D. SANFORD,
Board of Directors.

MR. SPOONTS: I move that the Secretary be instructed to cast the vote of the Association for these members.

The motion was seconded and unanimously adopted.

THE PRESIDENT: Is there any other unfinished business? If not, the election of officers is the next order of business.

MR. LEWIS: Mr. President and Gentlemen—I have the pleasure of presenting to the Association the name of a gentleman who has long been identified with its activities, and who has contributed possibly more than any other member of the Association to the efficiency of its administrative board; whose zeal and activity in making our annual meetings a success are known to all those who have been in regular attendance upon the Association; who is in the prime of life; who has achieved success in his profession; who has achieved that large success of having the regard of every member with whom he has been brought in contact; and who is, in accordance with our usage as it has been established by long custom, entitled to this distinction. I nominate Hon. R. E. L. Saner of Dallas for President. (Applause.)

THE PRESIDENT: Are there any other nominations? If not, the nominations will be closed.

MR. BURGESS: I move that the Secretary be instructed to cast the vote of the Association for the President.

The motion was seconded and unanimously adopted.

THE PRESIDENT: I declare that Mr. Saner has been elected. Is he in the hall? I appoint Mr. Burgess a committee of one to bring Mr. Saner to the platform. (Applause.)

MR. SANER: Mr. President and Gentlemen—I thank you very much for the honor that you have conferred upon me. I will try my very best to be a worthy successor of our friend, the present incumbent. (Applause.)

THE PRESIDENT: I thought I was going to surrender my office just now, but I am informed by Mr. Saner that under the resolution that has been adopted by the Board of Directors the present President must serve out, and as the business is formal, I do not particularly object to it, except I am getting mighty

hot up here. The next business is the election of a Vice-President.

MR. HENDERSON: Mr. President and Gentlemen—I nominate for the office of Vice-President the name of a veteran member of this Association, one who has attended our meetings, who has faithfully given his services to us in many capacities, the son of a patriot who carried a musket at San Jacinto, Hon. John T. Duncan of La Grange. (Applause.)

MR. SPOONTS: I desire to express my appreciation and admiration of Mr. Duncan by seconding his nomination. (Applause.)

MR. BRYAN: I move that the Secretary cast the ballot of the Association for Mr. Duncan.

The motion was seconded and unanimously adopted, and Mr. Duncan declared elected.

MR. DUNCAN: It is needless for me to say that I thank you for this flattering compliment. With your permission, later on I will have my remarks published in the record. (Laughter and applause.)

THE PRESIDENT: The next business is the election of a Treasurer.

MR. BALLEW: I did not know that was necessary. I thought he was a life office holder.

THE PRESIDENT: That is satisfactory to the Chair.

MR. BRYAN: It is only necessary for the Chair to declare Mr. W. D. Williams the Treasurer, as usual. (Applause.)

THE PRESIDENT: All in favor of that suggestion say aye. I won't put the contrary vote, because I know nobody will vote. The next business is the election of a Secretary. Nominations are in order for a Secretary.

MR. BURGESS: I move that Mr. J. B. Cave be elected. He has made us a most efficient Secretary, and is willing to continue the service, and I move the Vice-President be directed to cast the vote of the Association for Mr. Cave.

The motion was seconded and unanimously adopted, and Mr. Cave declared elected.

THE PRESIDENT: The next is the election of a Board of Directors.

VOICES: Speech by Cave.

MR. CAVE: In the midst of so many lawyers I do not think it is necessary for me to make a speech. I thank you. (Applause.)

On motions duly seconded, the Secretary was instructed to cast the ballot of the Association for the following Board of Directors for the ensuing year, which was done, and the following Board of Directors declared elected:

W. W. Searcy, Brenham.

A. D. Sanford, Waco.

Marshall Spoonts, Fort Worth.

W. T. Bartholomew, San Angelo.

W. C. Morrow, Hillsboro.

On motions, duly seconded, the following members were nominated as Delegates to the American Bar Association:

O. L. Stribling, Waco.

B. B. Stone, Ballinger.

Norman G. Kittrell, Houston.

A. B. Watkins, Athens.

J. W. Woods, Houston.

I. P. Hildebrand, Austin.

THE PRESIDENT: How many delegates are we entitled to?

MR. BURGESS: Three delegates and three alternates. We have nominated six. Let the Secretary vote for the first three as delegates and the second three as alternates.

The motion was seconded and unanimously adopted, and the gentlemen named declared elected.

MR. BURGESS: Now, if anybody else finds he can be there at that time, I move that he be substituted for any one that is on the regular list who can not go. If any member of the Association finds he may be in Boston during that meeting by giving his name to the Secretary he can receive his credentials.

THE PRESIDENT: Let it be done by consent and without the Secretary's making it a part of our record.

MR. BURGESS: Yes.

MR. ESTES: I move a vote of thanks to Martin W. Littleton, and that he be made an honorary member of the Association.

The motion was seconded and unanimously adopted.

MR. SPOONTS: I move the adoption of the following resolution:

"Resolved, That the Texas Bar Association extend to the members of the Bar of Waco and to the press their sincere and hearty thanks for their entertainment at this time, and their uniform courtesies to us at this meeting."

The motion was seconded and unanimously adopted.

MR. BARTHOLOMEW: I offer the following resolution:

"Resolved, That the members of the Texas Bar Association thank the Hon. Hiram Glass for the fair and impartial way in which he has presided today and yesterday, and for the service of the past year in behalf of this Association."

THE PRESIDENT: I declare that out of order, because the Constitution prohibits it. I thank you very kindly for it, but no such resolution can be entertained. It is unconstitutional. Is there any other business to come before this meeting? I want to call your attention as to what you are going to do about meeting at Galveston. That is somewhat up in the air.

JUDGE JENKINS: There was no resolution. It was a tentative vote, and it was expressly stated we were not voting to adjourn to meet at Galveston when we adjourned here. Anybody that wants to meet there can meet there.

THE PRESIDENT: That is the way I understood it, but I did not want to adjourn without calling attention to it, so that if anybody did want to offer a resolution to call an adjourned meeting down there they would have opportunity to do so.

MR. BURGESS: Haven't we by the action we have taken today made the Galveston meeting unnecessary? We have appointed a committee with full authority to act.

THE PRESIDENT: If there is no motion to meet down there, I take it for granted—

MR. BURGESS: I move we adjourn.

JUDGE SPEER: Has the President overlooked the appointing of that committee, or simply holding it in abeyance?

THE PRESIDENT: The President has not appointed that committee yet.

JUDGE SPEER: I think the resolution contemplates the appointment of that committee by the present President. It con-

templates the appointment of a committee of nine, and that the duties of that committee are such that they must get to work immediately, and therefore I construe it that the President should appoint that committee immediately, and I therefore call the attention of the President to that fact, if that is the understanding of the Association, that the committee should now be appointed.

THE PRESIDENT: The President would be inclined to leave that duty to be performed by the new President you have elected. Of course, it would have to be attended to at once, but I am inclined to leave that to my successor.

MR. BURGESS: I now make the motion to adjourn.

MR. HAWKINS: I make the point of order that the committee ought to be recorded in the minutes of this meeting.

THE PRESIDENT: A motion to adjourn is always in order.

MR. HAWKINS: I move to lay the motion to adjourn upon the table.

The motion to adjourn and the motion to lay the motion to adjourn on the table were both seconded.

MR. WATKINS: Couldn't you and the incoming President meet and in a few minutes select that committee? It occurs to me it can be done in the next five minutes.

MR. BURGESS: I am in this attitude: That committee, whoever appoints it, is going to be all right.

MR. HAWKINS: But it ought to go in the minutes.

MR. BURGESS: I am disqualified and could not be on it, anyway. Therefore, it is an impersonal matter to me. It has been the uniform practice of this Association for many years that where there is a motion that the President appoint a committee of this kind, the incoming President appoints him. Now I am perfectly satisfied to have Mr. Glass appoint any committee in the world, but the rule I have stated is the invariable rule of this Association, and there is no occasion for a variation of it in this instance. A motion to table a motion to adjourn is not in order. The motion to adjourn comes first. You can vote it down, if you please.

THE PRESIDENT: I will sustain the point of order and put the motion to adjourn.

The vote on the motion to adjourn was 29 ayes and 22 noes, and the meeting was declared adjourned until the next regular meeting.

APPENDIX

ANNUAL ADDRESS

BY

HIRAM GLASS

PRESIDENT OF TEXAS BAR ASSOCIATION

WACO, TEXAS

July 4th, 1911

Gentlemen of the Texas Bar Association:

The Constitution of this Association provides that your President shall open the meeting with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law. As but few, if any, persons outside the Association will hear or read the President's address, it might with propriety be asked whether a body of lawyers, such as compose this Association, need to be reminded of the laws passed by the Legislature of their own State. However, since the highest law of the Association requires it, I will, as briefly as possible, and to the best of my ability, discharge that duty.

Since the last meeting of this Association, the Thirty-first Legislature of Texas was called together in two special sessions, which were the Third and Fourth Special Called Sessions thereof.

The Third Called Session convened on July 19th and adjourned on August 17th, 1910. During this session provision was made for the payment of certain State bonds issued in 1879, and for retiring certain bonds of the State issued in 1870, and issuing new bonds in place thereof.

This session also passed a law prohibiting the exhibition of prize fights and other immoral shows by means of moving pictures; also passed laws strengthening and perfecting the local option statutes and providing how sales of intoxicating liquors

may be made in local option districts upon prescriptions of physicians, etc.

During that session there was passed an act providing a system of bookkeeping and accounting for the Comptroller of Public Accounts, which, according to reliable information, has resulted in many improvements in that department, as well as in lessening the expense of its administration.

The Third Called Session of the Thirty-first Legislature, without accomplishing a great deal in the final passage of laws, having remained in session the limit under the Constitution, adjourned on August 17th. The Governor, using his own expression, "having determined to keep the noses of the law-makers to the grindstone," immediately called the Fourth Called Session of the said Legislature to convene on August the 18th, and in pursuance of that call, the Legislature convened on that date and remained in session until September 10th, during which time very important and noteworthy changes were made in the statutory laws of this State.

RAILROAD COMPANIES—PRESCRIBING CONDITIONS UPON WHICH
PURCHASERS OF PROPERTY AND FRANCHISES MAY
BECOME OWNERS OF CHARTER, ETC.

Articles 4549 and 4550 of the Revised Statutes were amended. The amendments were important and far reaching in their effect, and have provoked more discussion perhaps than any other law enacted by the Texas Legislature since the Stock and Bond Law of 1893.

As amended, the two articles of the statute read as follows:

"Article 4549. In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver, acting under judgments, heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, however, that said purchaser or purchasers, and associates, if any, shall not be deemed and taken to be the owners of the charter of the railroad

company and corporators under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises, charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries, sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities, when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by an instrument in writing signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State of the State of Texas; and, provided, further, that such charter, together with the powers, rights, privileges and benefits thereof shall pass to said purchaser or purchasers, and associates, if any, subject to the terms, provisions, restrictions and limitations imposed and to be imposed by law; and, provided further, that the amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas, at its discretion, save that the total encumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 4584b of the Revised Statutes of Texas of 1895.

“Article 4550. In case of any sale heretofore or hereafter made of the property and franchises of a railroad company, within this State, the purchaser or purchasers thereof, and as-

sociates, if any, shall be entitled to form a corporation under Chapter One, of Title XCIV, of the Revised Statutes of Texas, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation, and when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend; provided, that notwithstanding such incorporation, the property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries, sustained in the operation of the railroad, by the sold-out company and by any receiver thereof and for loss of and damage to property, sustained in the operation of the railroad by the sold-out company and by any receiver thereof. and for the current expenses of such operation, including labor, supplies, and repairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; and provided that by such purchase and organization, no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved; and provided, further, that the amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas, at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 4584b of the Revised Statutes of Texas of 1895."

While the above amendment was passed in the form, and has the effect of a general law, applying to all railroads and owners of railroad securities, it was in fact a special law, passed to se-

cure the payment of, and give priority to the unsecured claims against the International & Great Northern Railroad Company, over the bonds of said company, which were secured, or at least supposed to be secured, by mortgages upon its entire property.

Certain of the mortgage bond holders of said railroad company had applied for and secured the appointment of a receiver of all its properties and had secured a foreclosure of the mortgage liens and an order of sale to sell said property. Under the law as it then existed, the holders of the bonds secured by said mortgages had a prior lien upon said property superior to judgments and claims for personal injuries, deaths, and other unsecured debts, except such as would be given priority by a court of equity, which generally include claims for labor, railroad supplies, etc., furnished within six months prior to the taking possession of such property by the court, through its receiver.

There were unpaid claims and judgments for deaths and personal injuries amounting, in the aggregate, to a large sum, which, under the law then existing, were subordinate to the mortgage bonds, and as said bonds were supposed to amount to as much as the property was worth, it was apparent that death, personal injury and many other claims would not be paid.

To meet this condition and make these unsecured claims superior to the mortgage debts, it was provided in Article 4549 that the purchaser should not be deemed and taken to be the owner of the charter of the railroad company nor vested with the powers, rights, privileges and benefits of such charter unless he should agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad company, and for loss and damage to property sustained in the operation of the company, and for current expenses of such operation, including labor, supplies and repairs, providing that such claims should have accrued within two years prior thereto, or that suit should have been brought thereon within two years prior to the sale of the property or the appointment of a receiver.

Article 4550 provides that a new railroad corporation may be created for the purpose of buying and taking over the property of a sold-out railroad company, but provides that such new cor-

poration shall take the property charged with and subject to the payment of all liabilities and claims for death and personal injuries against the sold-out company, as well as for loss and damage to property and for current expenses of such operation, including labor, supplies and repairs, provided the same accrued or suit had been brought thereon within two years prior to the sale or the appointment of a receiver for such property.

Thus it is seen that by force of statute, the Legislature has undertaken to make unsecured debts better than secured debts. There may be, and doubtless is, a difference of opinion as to whether prohibition does or does not prohibit, but under this statute, when enforced, there can be no question that security does not secure.

If, under the law as it existed prior to said statute, the purchaser of a railroad company could take title to the charter and franchise rights of said company, there can be no doubt that the main provisions of Article 4549, as amended, are unconstitutional, in that it impairs the obligation of the mortgage contract securing the bonds; and if the purchaser or purchasers of a railroad company at foreclosure sale should elect to operate the road without the formation or creation of a new corporation, it is doubtful if the unsecured creditors could legally enforce the payment of their claims.

However, as it is impracticable to so operate an important railroad system, the purchasers would be almost necessarily compelled to form a new corporation as provided in Article 4550, and in that event, having taken advantage of the law to form the corporation, they would take the property subject to the burdens imposed upon it by law. In other words, they could not take advantage of the law and form a corporation to own and operate the property without at the same time assuming the burdens fixed and provided by the same law. Therefore, although the first article might, and probably would, be declared invalid, the unsecured claimants could enforce the payment of their claims over the debts secured by mortgage if the purchasers of the property should elect to form a new corporation to own and operate, as provided in Article 4550.

While, as before stated, prior to this enactment, there was no statute that gave unsecured claims a preference over secured

debts, courts of equity, however, have, where the mortgaged property has been administered by the court through a receiver, given preference to claims for labor, supplies, etc., on the theory that they were for the necessary conservation and the protection of the property, and therefore operated to the benefit of the security holders. This statute goes further, and extends this preference and protection to claims for deaths and personal injuries incurred in the operation of the road, and greatly lengthens the time prior to sale or receivership proceedings during which claims may accrue or be sued upon and still be given priority over mortgages.

The statute does not seem to have provoked much comment or criticism by the established trunk lines of railways in the State, but much complaint has been made by the smaller and weaker lines that were attempting to build or extend, it being claimed that the passage of the law made it impossible for such new lines to borrow money for the purpose of constructing and extending their roads. An effort was made during the regular session of the Thirty-second Legislature to amend the law, and the committee having the matter under consideration, by a large majority, recommended the passage of the amendment, but the advocates of the amendment were not able to make further progress. It remains to be seen whether the Legislature will, in its wisdom, in the future repeal, amend or modify the law.

It has been announced through the press that those having in charge the reorganization of the International and Great Northern Railroad probably will pay off the unsecured claims sought to be protected by the act, and if that is done, there is no immediate prospect that the validity of the law will be tested. That the law is valid, insofar as mortgages executed after its passage are concerned, is undoubtedly true. But as to mortgages existing before its passage, it would seem to be ineffectual, except in cases where new corporations are formed, as provided in Article 4550, as hereinbefore indicated.

That part of the act which extends to claims and judgments for deaths and personal injuries incurred in the operation of the road, the same protection that courts of equity have heretofore extended to labor and supply claims, would seem to be just and fair. Personal injuries and deaths, occurring during the opera-

tion of railroads, are inevitable, and while they can be, and have been, reduced and limited, in the very nature of the case, they cannot be altogether avoided. They are an operating expense, as much so as the timber that goes into bridges or the ties that go into the track, or the coal that is consumed in the locomotive.

BILLS OF LADING.

At the Fourth Called Session of the Thirty-first Legislature there was enacted a law governing the issuance, delivery and effect of bills of lading by railway companies, steamships and other carriers except express and pipe line companies. Section 2 of the act prescribes what the bill of lading shall contain and how and by whom it shall be executed. Section 3 provides that a bill of lading which states that the goods are consigned or destined to a specific person is a straight bill of lading, and one that states that the goods are consigned to the order of any person named therein, is an order bill of lading. It is provided that order bills of lading shall not be issued in sets or duplicates, but that copies may be issued, provided they have written or printed across the face thereof, the words "Copy—Not Negotiable."

Section 4 makes it the duty of the Railroad Commission to prescribe forms, terms and conditions for the authentication of bills of lading and to regulate the method and manner of their issuance.

The act provides that every bill of lading issued by the authorized agent of any carrier shall be held to be the act and deed of such carrier, and that it shall be liable thereon in accordance with the terms thereof, and when authenticated in the hands of an innocent holder for value, shall be incontestable. The act also makes it a crime to refuse to issue a bill of lading in accordance with the act when the same is rightfully demanded; also makes it a felony for any agent of the company to issue a bill of lading with the intent to defraud any person, or to issue such a bill of lading, without the authority to do so, with the intent to defraud; also makes it a felony for any person to forge the name of any agent of a railroad company or common carrier to a bill of lading. The act also makes it a felony for any person

to knowingly and with the intent to defraud, negotiate or transfer a bill of lading in violation of the provisions of the act. It is also made a crime for any person to fraudulently procure, or cause an agent of a common carrier to make any statements or representations in a bill of lading that are untrue and which materially misrepresent the number, amount or quality of the goods or articles described therein. The act also provides that common carriers shall not be liable for the transportation and delivery of goods for which a bill of lading has been issued where the property has been replevied or levied upon or taken from the possession of the carrier by legal process, or where it is sold to satisfy the carrier's lien.

Like the conditions that led up to the passage of the International and Great Northern bill, the necessity for the passage of the Bill of Lading Act was brought to the attention of the Legislature by numerous wholesale frauds and forgeries in the issuance and transfer of bills of lading for cotton.

There being no statute in Texas adequately covering the subject, and the season for the sale of the 1910 cotton crop being at hand, there appeared to be an urgent necessity for the passage of some law on the subject. The statute, whilst hurriedly prepared and enacted, seems to be a wise and wholesome law, and while I believe that the Bill of Lading Act, prepared and recommended by the Commissioners on Uniform State Laws would, in addition to providing a uniform law, have been preferable and an improvement on the act under consideration, yet, considering the brief time for its preparation and consideration, I think the Legislature is to be congratulated on the passage of a law that so nearly met the exigencies of a difficult situation.

PENITENTIARIES—ESTABLISHING A NEW SYSTEM.

A most noteworthy and important change made in the statutory law of this State, is the act passed by the Fourth Called Session of the Thirty-first Legislature for the establishment of a prison system and to provide for the management and control of the same, as well as for the management, control and treatment of prisoners, and to provide a Board of Prison Commissioners. The act is a lengthy and, apparently, well considered one, and

became effective on January 20th, 1911. The three Prison Commissioners have been appointed and qualified, and are now managing and controlling the penitentiaries of this State. There seems to be every reason to hope and expect that the system will prove successful.

Like the other acts hereinbefore referred to, the attention of the Fourth Called Session of the Legislature and the necessity for the enactment was called to its attention by complaints and clamors against the then existing system. Whether such complaints and clamors were justified or not, they were made, and the situation became so acute, that some legislation was absolutely necessary in order to satisfy public clamor. The Legislature met the situation as best it could, and there is every reason to hope and believe that it did so wisely and effectually.

FIRE INSURANCE COMPANIES.

Another noteworthy change was made by the Thirty-first Legislature at its Fourth Called Session in repealing Chapter 18 of the General Laws passed by the same Legislature, and passing in lieu thereof an act providing conditions upon which insurance companies writing contracts or policies of insurance against the hazard of fire may transact business in the State, and providing for the making, promulgation, regulation and control of general basis schedules, insurance rates and premiums and forms of insurance policies; providing certain conditions and limitations on insurance contracts or policies; providing for maximum insurance rates and how companies may write contracts of insurance at rates lower than the maximum rates, and the filing of statements of reduced rates with the State Insurance Board and certified copies thereof with city secretaries and county clerks, and fixing fees of such officers for such service; to prevent discrimination in insurance rates or premiums, except as provided in the act; to create a State Insurance Board and prescribe the duties and authority of said board and each member thereof, and providing for their appointment and removal.

This law became effective early in December, 1910; and while it has been in force seven months, it is too early to say whether or not it will prove satisfactory, though there seems to be no serious complaint made against the act thus far.

A very important provision of the act is for making one of the appointive members of the board Fire Marshal. It is made his duty, at the discretion of the board, and upon the request of the mayor of any city or village, fire marshal, chief of the fire department, county or district judge, or the sheriff or county attorney of any county where a fire occurs, to forthwith investigate the origin, cause and circumstances of such fire and ascertain, if possible, whether the same was the result of an accident, carelessness or design, and make a written report thereof to the board, as well as to furnish to the county or district attorney all information or evidence obtained by him concerning the fire.

THIRTY-SECOND LEGISLATURE.

The Thirty-second Legislature convened January 10th, this year, and remained in session sixty days, during which time many wise and salutary laws were passed.

In some quarters there seems to be an impression that it was a "do-nothing" Legislature. A greater mistake was never made. A more patriotic or hardworking body of lawmakers never assembled in this State. No Legislature has accomplished more in the same length of time.

Of course, the mere number and bulk, alone, of laws passed are no indication of the wisdom of such enactments, but may be considered in making comparisons with the accomplishments of other Legislatures, in determining the comparative activity of the different bodies. The Thirty-first Legislature, in Regular Session, lasting sixty days, passed 122 general laws, which, as printed in pamphlet form, covers 248 pages. The Thirty-second Legislature was in session sixty days and passed 120 general laws, covering 271 pages, as published in pamphlet form.

The fame of the Thirty-second Legislature will rest, not alone in what it accomplished, but also in what it failed to accomplish, or, more correctly speaking, in what it prevented. Early in the session it became apparent that its members were determined to pass only such laws as were for the good of the great body of the people, and that it would not, at the expense of the masses, pass laws for the special benefit of any particular class or classes of its citizens.

CRIMINAL LAW.

Only one felony statute was enacted. That provides for the punishment of persons violating the law regulating elections on Constitutional amendments. That enactment was specially for the safe-guarding and fairness of the election on the prohibition amendment to be voted on the 22nd of this month.

Laws were enacted making it a misdemeanor for any person to violate the law to eradicate sheep scab; for the sale or drinking of intoxicating liquors, or permitting or causing anyone else to drink same in disorderly houses; for owners of cotton gins to fail to stamp the weight of bagging and ties on baled cotton; for the employment of children in factories, mills, etc.; for adulteration of articles of food; for solicitation of patients for physicians; for the destruction of squirrels in Liberty County; for failure of railroads to inspect airbrakes of trains at terminal divisions; for violation of the law for the protection of fish and oysters in tide water; for violating the law regulating the practice of veterinary medicine; for failure of mine owners to insulate live wires in mines; for feeding animals and storing feed in mines; for violating the law regulating the sale of commercial fertilizers, and for violating the law relating to the protection of fish in fresh waters.

CIVIL STATUTES.

An important change was made in the forcible entry and detainer statute in adding an article, authorizing the joining of a suit for rent with an action for forcible entry and detainer when the amount in controversy for rent is within the jurisdiction of the justice court. Under this statute, a person may, in the same suit, recover possession of his land and a judgment for rent.

Another noteworthy change in the statute laws of this State is that which authorizes a married woman, with the consent of and joined by her husband, to have her disabilities of coverture removed and being declared feme sole for mercantile and trading purposes. Under this statute a married woman, having her disabilities so removed, may, in her own name, contract and be contracted with, sue and be sued, and all her separate property

not exempt from execution shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be as binding as if she were a single woman more than 21 years of age. It is provided, however, that no married woman shall encumber her real estate, except as theretofore provided by law.

Higher cost of living was officially recognized by the passage of a law increasing the pay of sheriffs for the board of prisoners; also making an increase in the pay of petit and grand juries. They are now paid \$2.50 per day.

The Legislature yielded to the demands of the newspapers of the State by amending the Anti-pass Law so as to authorize such papers and the railroads to contract for advertising to be paid for in transportation. Under this law, newspaper men will not be allowed to ride on free passes, but their transportation over railroads may be paid for in advertising at regular rates, the contracts for such advertising to be filed with the Railroad Commission. In this respect the amendment to the Anti-pass Law seems eminently fair and proper.

The jurisdiction and authority of the Railroad Commission was extended over all public wharves, docks, piers, elevators, warehouses, etc., used in connection therewith, and over all suburban, belt and terminal railroads, as well as all persons, associations and corporations, private or municipal, owning or operating any such railroad, wharf, dock, elevator, warehouse, etc. It is made the duty of the Commission to fix and adopt all necessary rates, charges and regulations, to govern and regulate such persons, associations and corporations, and to correct abuses and prevent unjust discriminations in the rates, charges and tolls of such persons and associations, and to fix divisions of rates and charges between the same and other common carriers.

Article 1552 of the Revised Statutes was amended so as to provide for regular terms of the Commissioners' Courts to be held on the second Monday of each month throughout the entire year, providing that it shall be not mandatory on any such courts to hold more than one session each quarter if the business of the court does not demand it.

All cities and towns operating under Title 18 of the Revised Statutes were, and now are, authorized to mortgage and en-

cumber their light and water systems, or either, as well as the income thereof and everything pertaining thereto, to secure the payment of funds to purchase same, or purchase additional water power, riparian rights, or to build, improve, enlarge, extend or repair such systems; and as an additional security, may grant to the purchaser or purchasers under the sale or foreclosure of such mortgage, a franchise to operate the systems and properties so purchased for a term of not more than twenty years.

Cities acting under special charters were authorized to make and carry out contracts heretofore or hereafter made with railway companies for the construction of viaducts over the tracks of such railroads and to close and discontinue such streets crossed by such railroad tracks as may be agreed upon between the city and railroad company; also authorizing the city to issue viaduct bonds, not to exceed \$10,000, for the purchase of right of way and pay for abutting property damage; also giving to such city the power of eminent domain and to condemn all lands necessary for such right of way; also authorizing such city to compel the construction and completion of such viaducts.

This Legislature, following the example of its several predecessors, repealed the old and passed a new official court stenographer's act, by which such stenographers are paid \$5.00 per day for each day's attendance upon the District Court, held in one county, and a salary of \$1,500 per annum where the district composes two or more counties. They are also paid fees of 15 cents per hundred words for transcribing testimony in cases tried. The pay of such stenographers for transcribing testimony is increased 50 per cent, but they are allowed nothing for making a duplicate copy of such testimony.

At the request of any party to the suit, a stenographer shall make a transcript in typewriting of all the evidence, including questions and answers, which shall be the property of the person ordering and paying for the same. The stenographers are also required to preserve all shorthand notes for a period of four years.

Section 5 of the act provides that in case of an appeal, the reporter shall transcribe the testimony and other proceedings in the form of questions and answers and certify that the same is correct and to file it in the office of the clerk of the court, the

same to be made in duplicate and to be paid for at the rate of 15 cents per hundred words for the original copy.

Section 6 provides that upon the filing of such transcript, the party appealing shall prepare, or cause to be prepared, a statement of facts in duplicate, which, when agreed to by the parties and approved by the judge, or when prepared and certified by the judge, in the absence of an agreement, to be sent up as a part of the record on appeal. The official reporter, when requested by the party appealing, must prepare from the transcript of questions and answers, a statement of facts in narrative form, for which he is paid at the rate of 15 cents per hundred words for the original, and make a duplicate without additional pay.

This law seems to work a hardship on litigants, in that it requires a transcript of all the evidence to be made in the form of questions and answers. This transcript is to be filed with the clerk and forms no part of the statement of facts. In addition to this transcript of questions and answers, the party appealing must also have prepared and pay for at the rate of 15 cents per hundred words, a statement of facts in narrative form.

Under the law prior to this enactment, a party appealing could have a statement of facts, in narrative form, made by the official court reporter from his notes without first having to incur the expense of having such notes transcribed in the form of questions and answers. By this act, if I have correctly interpreted it, the expense to litigants of procuring and having the benefit of a statement of facts on appeal will be more than doubled.

While a transcript of the questions and answers and other proceedings may be desirable, and, in many cases useful, I doubt if this additional expense is justified. Court expenses are already burdensome, and this law materially adds to that burden. In the interest of economy, I am inclined to the opinion that it would have been sufficient to have had a transcript of the evidence in narrative form made by the reporter from the use of his notes. It would have at least been much cheaper.

NATIONAL JUDICIARY ACT.

The Congress of the United States on March 3rd, 1911, passed finally an act to codify, revise and amend the laws relating to the judiciary. This act becomes effective January 1st, 1912.

The most noteworthy change made by this act is the abolition of United States Circuit Courts. It is provided that upon the taking effect of the act, the Circuit Courts of the United States shall be, and are, abolished, and that the clerks of such courts shall thereupon deliver to the clerks of the District Courts for their respective districts, all journals, dockets, books, records, etc., belonging to or in any manner connected with the Circuit Courts; and shall also deliver to the District Clerks of their respective districts, all moneys remaining in their hands or under their control.

The act provides for the appointment and qualification of a District Judge in each of the judicial districts named in the act, and for additional District Judges in some of these districts. It defines the jurisdiction of the District Courts in the main and vests them with the jurisdiction now exercised by the Circuit Courts. The minimum of amount in controversy under the new act must exceed in value, three thousand dollars. The act provides for the removal of certain causes from the State courts to the United States District Courts. The State of Texas is divided, as at present, into four districts, to be known as the Northern, Eastern, Western and Southern Districts, and fixes the time of holding court in each of the several places in said districts, and names the counties which shall constitute each division.

The act conforms to the present law in dividing the United States into nine judicial circuits, and provides for a Circuit Court of Appeals in each circuit to consist of three judges, two of whom constitute a quorum. The Second, Seventh and Eighth Circuits are provided with four Circuit Judges, the Fourth with two, and each of the other circuits with three Circuit Judges. The Chief Justice and Associate Justices of the Supreme Court are allotted among the circuits by an order of that court.

The act also provides for a continuation of the Court of Claims, and provides for its organization, jurisdiction and

proceedings. It provides for a Court of Custom Appeals, consisting of a Presiding Judge and four Associate Justices, to be appointed by the President, by and with the advice of the Senate.

The Commerce Court is provided for, and is composed of five judges to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the Circuit Judges, except that in the first instance the court shall be composed of five additional Circuit Judges authorized and provided for in Section 201 of the act. This court is given the jurisdiction heretofore possessed by Circuit Courts of the United States over all cases of the following kinds:

First: All cases for the enforcement, otherwise than by adjudication, and collection of the forfeiture or penalty for the infliction of criminal punishment, of any order of the Interstate Commerce Commission, other than for the payment of money.

Second: Cases brought to enjoin, set aside, annul, or suspend in whole or in part, any order of the Interstate Commerce Commission.

Third: Such cases, as by Section 3 of the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February 4, 1887, as amended, are authorized to be maintained in a Circuit Court of the United States.

Fourth: All mandamus proceedings as under the provisions of Section 20 or 23 of the act entitled "An act to regulate commerce," approved February 4, 1887, as amended, are authorized to be maintained in a Circuit Court of the United States.

The jurisdiction of the Commerce Court over cases of the foregoing classes is made exclusive.

Considering the immense volume of interstate and foreign commerce, the importance of this new tribunal can hardly be overestimated.

The act creating the Commerce Court has already become effective and the judges have been appointed and have qualified. This amended and revised judiciary act constitutes fourteen chapters, and is divided into 301 sections, the last of which provides that it shall take effect and be in force from and after January 1st, 1912.

UNIFORM LEGISLATION.

In 1890, the American Bar Association, following the lead of the New York Legislature, resolved to recommend the passage by each State and by the Congress of the United States for the District of Columbia, certain uniform laws! To give effect to the recommendation to promote uniformity of legislation, the organization known as the Commissioners on Uniform State Laws, consisting of commissioners from each State and Territory willing to participate in the movement, was organized and since said time has held twenty annual national conferences. Forty-eight States and Territories, including the District of Columbia and the Philippine Islands, are represented in the conference.

A Uniform Sales Act, Uniform Stock Transfer Act, Uniform Negotiable Instrument Act, Uniform Warehouse Receipts Act and a Uniform Bills of Lading Act have been prepared and recommended for passage by the different States and Territories. Each of the acts has been drafted by experts, carefully considered in committee, at various sessions of the whole conference, after being printed in tentative form, and sent out for public and private criticism. Each of these acts has therefore had the most careful scrutiny, and, as a result, it is believed that they represent the actual law on all the subjects covered, and where the law of the various States differs, the weight of authority is expressed in these acts.

The necessity for such uniform legislation is well expressed in the Last Annual Report of the President of the Conference, as follows: "All of these acts have been prepared in response to the pressing need of the business world to remove as far as possible the uncertainty and annoyance arising from the widely differing laws of the States and Territories on matters of daily importance. The Conference of Commissioners has been careful to avoid taking up any subject that is not so far settled and of such universal application as to make it a proper subject for embodiment in a statute. They have followed largely the precedent, and have been guided by the experience of Great Britain and her colonies in their selection of subjects. The adoption of the American Uniform Commercial Acts and their interpreta-

tion by the courts of last resort in accordance with the spirit of prevailing mercantile usage, will remove one of the greatest drawbacks to the satisfactory working of our dual political system in its application to business matters, and cannot fail to strengthen that system itself."

As shown by the last annual report of the conference, the Uniform Negotiable Instrument Act has been enacted in Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming, in all thirty-eight States and Territories. The Uniform Warehouse Receipts Act has been adopted in six, including the Territory of Arizona. The Uniform Stock Transfer Act and Uniform Bills of Lading Act have met with much favorable comment, and have been adopted in some of the States, and will be adopted in a great many more.

Texas has been represented at the last three Annual Conferences, and the Governor has appointed Commissioners for the next Annual Conference, to meet in Boston, Massachusetts, the latter part of August, and it is earnestly hoped that each of the appointees will be in attendance.

This State has not passed any of the uniform acts, but it is hoped that the Legislature will, as early as possible, give to the citizens and the business interests of the State, the advantage of operating under the commercial laws that have received the careful and painstaking efforts of the ablest experts in their preparation.

The greatest evil affecting the passage of laws is what is denominated "hasty legislation." This is not said, and must not be understood, as an unfriendly criticism. It is the result of conditions over which the Legislature would seem to have no control.

Considering the length of our legislative session, the important and varied subjects of legislation, in the very nature of the case it is impossible for our lawmakers to give that careful and pains-

taking attention to the preparation and consideration of the many and varied proposed acts that is deserved and that is absolutely necessary to make them perfect so far as it is possible to do so. Longer sessions and better pay for the members of the Legislature would largely remove the evil referred to. However, the statement that "the laborer is worthy of his hire," does not seem to be applicable to our public officials. There seems to be small prospect that the pay will be increased. Until that is done, it would seem to be asking too much of our lawmakers to remain in session at so great a financial loss. In this state of affairs, would it not be well for the Legislature to take advantage of, and adopt, the valuable and almost perfect work of the Commissions on Uniform State Laws? I earnestly hope the next Legislature will see proper to do so.

JUDICIAL REFORM IN TEXAS.

BY

WILLIAM HODGES

OF ILLINOIS.

If the frequent criticisms of our present judicial system and methods of procedure which have appeared in the periodicals of the day and in the public utterances of representative men are to be accepted as fair samples of public sentiment, there is a strong and growing demand for some important reforms in that department of our government. These demands should not be passed unheeded by the lawyers of the State, that element of our citizenship to which the country has a right to look for an appropriate response. While in the construction of government in all its parts the lawyer has always been an important agent. the shaping of the judiciary and its methods of procedure have been his specialties; and this is as it should be, for by education and training he, more than any other, knows how that department should be constructed and its procedure conducted. There is an unwritten duty which every class of citizens owe to the community in which they live. We look to those skilled in the science of medicine and surgery for new and improved methods of combating disease, and they have responded by giving us remedies and hygienic rules that have prolonged the average duration of human life. We depend upon the genius and zeal of the students of the science of mechanics for improved methods of transportation, for opening new avenues of commerce, inventing better implements of labor and for increasing its efficiency; and we have not been disappointed. We expect those engaged in the art of educating and training of the young to employ their experience and fitness in devising new and better methods for imparting information and of acquiring fresh knowledge to be imparted. and this is being done. Why, then, should not the lawyers consider it a part of their unwritten obligation to society the performance of that duty for which they above all others are best equipped? It cannot be said that the lawyer is less faithful in this respect than are his contemporaries in other professions or

lines of business. His extreme conservatism and indisposition to experiment with changes has often subjected the profession to the criticism of being indifferent. The lawyer knows that any change in the methods of procedure, the rules of pleading, or construction of the judicial system is always attended with more or less inconvenience. The adoption of every new constitutional provision, or the enactment of a new law, presents one or more new questions for judicial determination. Hence, the thoughtful lawyer prefers to endure the ills we have than to fly to others he knows not of.

The present judicial system in Texas is not the antiquated product of a less enlightened age that many would have us believe. It is true that it originated at a time when conditions were in many respects different from what they are today, when society was less solidified, and the general average of popular intelligence probably not so high as now. But since then the system has undergone many important modifications, both in its structure and in the methods of procedure. These modifications are too well known to call for mention in detail. Like many other changes in our form of government, they have been made in such a way and at such intervals as to appear more as normal growths than artificial engraftments, and may have escaped the observation of those who have not taken the trouble to institute comparisons. But the question is, do we need other reforms, either of system or of procedure? To this there is, I think, but one answer from those who have given the subject much consideration; and that is, we do. It is not enough to say that our system is defective; but the question is, are we prepared to improve upon it? It is one thing to point out a fault, and another to suggest a remedy that will not create other faults equally as grievous. If the task of formulating a system were committed to the best talent the country can command, and that body should deliver to us the fruits of its best efforts, there would still be defects. Upon trial it would be found that justice would at times still be slow and uncertain; that the guilty would continue to escape, and the innocent sometimes be made to suffer. In discussing measures to be recommended for adoption we can only do our best, using experience and observation in the past as our safest guides.

I know of no better method of presenting the subject than that of getting in mind the specific objections which appear to be the most tenable now being urged against the present system. These are: first, delays in trial courts; second, cumbersome and artificial requirements in pleading and procedure; third, delays in the disposition of appeals; fourth, reversals for immaterial errors; fifth, conflicting decisions emanating from the intermediate appellate courts. The delays in trial courts which appear to be the most frequent objects of criticism are those which occur in criminal proceedings. I shall not in this place attempt to discuss the basis of that complaint, nor to suggest a remedy, reserving that for consideration later. But I feel constrained to say that expedition in criminal proceedings is frequently attended with dangerous consequences to the accused. Unless we are prepared to abandon the old legal maxim, that it is better for a large number of guilty men to escape than for one innocent man to be punished, we cannot afford to jeopardize justice by haste. The commission of an act which is either a real or an apparent violation of laws enacted for the protection of the person usually excites more or less of popular indignation in the vicinity where it occurs. When the offense is grave, or is attended with any specially atrocious elements, it is always difficult, and frequently impossible, to prevent this indignation from finding its way into the jury-box and impressing itself upon the verdict. No delay should be deemed unwarranted which only allows time for the subsidence of popular excitement before compelling the accused to stand a trial. But delays which are essential to the administration of justice are to be distinguished from those which are sought only for the purpose of defeating justice. I know of no better way of preventing a safeguard in this respect from being made an avenue of escape than by entrusting the trial judge with a sufficient discretion to meet emergencies as they arise. The most fruitful cause of unnecessary delays is the absence of witnesses—generally those relied on by the defense. As long as witnesses are required to attend at their own expense, and in most cases without any hope of reimbursement, this condition is likely to continue. Even in civil cases the absence of witnesses is sometimes urged as a ground for a continuance when for other reasons the ob-

jecting party is not ready for trial. In addition to what I shall later say with reference to changes in the terms of trial courts, I merely suggest that here, too, trial judges be given a larger field of discretion in determining the merits of all applications for continuance.

As at present constituted the district court, which is the great forum where our most important litigation, both civil and criminal, is now carried on, holds its terms at such wide intervals that a continuance for any cause means considerable delay. In order to obviate many of the defects now existing in our system of trial courts, I suggest the following modifications: That the Constitution be amended so as to provide for but one trial court above that of justice of the peace and the various municipal courts established in cities and towns; that this court be clothed with the combined jurisdiction now exercised by both the county and the district courts. Except in sparsely settled counties where the Legislature may deem it unnecessary, at least one such court should be established in each county in the State, and as many more as may be needed to dispose of the litigation. Where the excess of litigation over what one or more courts may be able to dispose of is not sufficient to require the full time of an additional court, the Legislature should have the authority to organize one for a district to be composed of two or more counties. Where the territorial jurisdiction is limited to a single county, the first Monday in each month should be made appearance day and the beginning of a term. Where the jurisdiction extends to more than one county the terms should be adjusted so as to be not less than two for each year. Provision should be made for the transfer of cases from the docket of one court to that of another where more than one sit in a county, with a view of affording opportunities for trial at as early a date as practicable. Rules of pleading and practice should be adjusted to conform with the modifications suggested. Grand juries should be drawn for the year or for a term less than a year, and empaneled at stated times and upon such other occasions as the court may deem advisable. Under this proposed system each county would be provided with a court open for the transaction of business at all times of the year. A continuance from one term to another would operate to post-

pone a trial for only a short time, unless the dockets were overcrowded. The profession would also be relieved of what is frequently a difficult problem, that of determining the question of jurisdiction as between district and county courts. This system of trial courts would do as much to obviate burdensome delays, and would at least furnish an opportunity for the timely disposition of litigation. It is not new, but has been before the Legislature of this State upon more than one occasion. I have purposely refrained from going into details further than I thought was necessary to a proper exposition of the general plan.

But whatever may be said about the construction of the *nisi prius* courts of Texas, it is generally conceded that our appellate system demands the most urgent attention. There are now approximately 1,500 civil cases appealed from trial courts each year in this State. Of these a large percentage may be carried from the Courts of Civil Appeals to the Supreme Court by writs of error, thus virtually giving a right to two appeals in all such instances. Starting in 1892 with three Courts of Civil Appeals, this number has within a period of eighteen years been increased to eight. We must assume that in doing this the lawmaking department has been moved solely by a necessity for providing an adequate number of courts to dispose of increased litigation. Texas is unlike many of the older States of the North and East, whose population is greater than ours. By reason of our great expanse of territory, our cheap lands and abundant natural resources, the State is being rapidly filled with a thrifty and industrious citizenship. Here the extremes of wealth and poverty so often met with in the great commercial centers of other countries, are absent. Our people, in the main, belong to the great middle class upon whose brawn and brain the world must rely for its material productions. They are people who make contracts, who buy and sell the year round; they fill the markets with the products of the mines, the field, the forest, and the pastures. From such commerce litigation inevitably follows, and its increase will keep pace with the growth of population till conditions are changed. By a simple calculation it is easy to see that the number of our Courts of Civil Appeals must soon be still further increased to dispose of the constantly increasing number of appeals. But such an increase in the num-

ber of these courts will furnish only a partial relief. In approximately one-third of the cases decided by the Courts of Civil Appeals writs of error are applied for or questions certified to the Supreme Court. A little more than twenty per cent of the applications are granted, according to a recent statement published in the papers. The Supreme Court is now more than a year behind its docket, and by the time it meets again the accumulation of cases will be still larger. While multiplying the number of Courts of Civil Appeals will enable those courts to make a timely disposition of all appeals over which they have final jurisdiction, it will increase the labors of the Supreme Court and still further congest its docket. It follows that unless some regulation is adopted at an early date by which to reduce the work of that tribunal, or its working force be enlarged, serious and inconvenient delays in the disposition of its business are inevitable.

Three ways of relieving that situation have been suggested. These are: (1) Reduce the business of the court by enlarging the final jurisdiction of the Courts of Civil Appeals; (2) increase the number of judges of the Supreme Court; or (3) reconstruct the entire appellate system by the substitution of one court of last resort, to be composed of a sufficient number of judges to handle all the appeals or applications for writs of error. Both the first and second suggestions contemplate the perpetuation of the present system of intermediate appellate courts, and are subject to whatever objection may be made against it. There is at present no apparent necessity for increasing the membership of the Supreme Court unless it is determined to not further restrict its jurisdiction. The question then is, which of the methods suggested will best answer the purposes for which appellate courts are established? If the present system is to be retained, I should personally favor a modification of the jurisdiction of the Supreme Court by restricting it in some respects and enlarging it in others; but upon the whole, reducing its business. In short, I would suggest that its authority be limited to the determination of such questions of law as in its judgment may be essential to the preservation of the consistency and uniformity of the State's jurisprudence. In giving my reasons for advancing this sug-

gestion, and in making my position understood, it is necessary to refer to some of the essential postulates upon which provisions for any appellate system are justified. In all controversies where the amount involved is above a fixed minimum the losing party should have the right to appeal in some form to another court for a review of the rulings upon which the adverse judgment is based. The ends of justice demand this for the reason, if for no other, that in the hurry incident to the trial of a cause in a *nisi prius* court the presiding judge has neither the time nor the opportunity to give to the questions upon which he must pass that attention and investigation so frequently essential to correct rulings, and which may be given in a court of appeals upon examining the record. But while the ends of justice demand one such appeal, I can see no good reason why the merits of a controversy should require more than one. If upon the first appeal the errors of the trial court are not corrected it is the fault of the judges who compose that appellate court. Upon such occasions there is the same opportunity for detecting error that is afforded in a second court of appeals. There is no more reason why the Courts of Civil Appeals, as at present constituted, should not properly dispose of a case upon its merits than there is for saying that a single appellate tribunal in this or any other State should not attain the same end, unless it can be said that the judges composing these courts are individually less capable as lawyers. If this be true, then the fault lies with the people in selecting incompetent judges; it is a mere accident, not a defect inherent in the system, and is one which is liable to occur with reference to any office filled either by appointment or by popular election. Hence, I assume that the establishment of a court to which a second appeal may be prosecuted is justified upon principle only when essential to the preservation of the consistency and uniformity of a system of jurisprudence which is made to depend upon the adjudications and opinions promulgated by a multiplicity of courts of co-ordinate jurisdiction. If this be the proper office of such a tribunal, why not limit its functions accordingly? Why should there be a second appeal allowed upon the merits in any controversy when the record has been reviewed by one competent appellate court? Let us assume, for the sake of argument, that

as at present constituted the personnel of the Courts of Civil Appeals is, in point of legal ability, below the standard which should measure the qualifications of the judges of a court of last resort as to the merits of cases. It is a condition which the people may easily remedy, and one which they will remedy when the duties imposed by law upon those courts demand a higher grade of legal ability. While it is true that people sometimes make mistakes in the selection of their officers, it is also true that our system of government is founded upon the theory that the people are capable of making their own selections.

At present the appellate jurisdiction of the Supreme Court extends to all questions of law arising in all civil cases in which the Courts of Civil Appeals have appellate, but not final, jurisdiction. This means that the Supreme Court has the power to determine all issues properly raised before it except those involving a finding of fact. Except in a limited class of cases writs of error will not lie from judgments reversing and remanding causes unless it is made to appear that the judgment of the Court of Civil Appeals practically settles the case. It is evident, therefore, that the chief end accomplished by an appeal to the Supreme Court is that of securing the correction of those errors of the Courts of Civil Appeals which affect the merits of the particular controversy; for the law does not permit recourse to that court in cases where judgments are reversed and the cause remanded, except in the instances above mentioned, regardless of the errors into which the Courts of Civil Appeals may have fallen in their declaration of the principles of law governing the case. We also learn from the decisions of the Supreme Court itself that it will refuse a writ of error, if the proper judgment has been rendered, notwithstanding the Court of Civil Appeals may have erred in its statement of some of its legal conclusions. A modification of the present law on the subject which merely provides for an increase in the membership of the Supreme Court could remove only one of the evils of which complaint is now made—the congested condition of the docket—and would leave unaffected those defects which are inherent in the system of intermediate courts of appeal.

One of the conditions essential to the peace and good order of society is that the law of the land should be made as certain as

is practicable. Uncertainty as to the law, when attributable to the conflicting rulings of the courts, not only lessens the respect with which the people regard the law and the courts, but is attended with annoying and expensive consequences to those whose rights are unsettled by such a situation. While it is made the duty of the Supreme Court, in those cases over which it may rightfully assume jurisdiction, to announce the rules of law which shall govern the questions there involved, the opportunity for doing this is limited and is hedged about with such restrictions that in only about one-third of the cases adjudicated on appeal can this be done. Even in those instances the opportunity is contingent upon the dissatisfaction of a defeated litigant with the judgment of the Court of Civil Appeals, and upon the particular questions which he may decide to present for review.

While the conflict between the holdings of the different Courts of Civil Appeals are neither so numerous nor so radical as many would have us believe, yet they sometimes occur, and will continue to arise so long as the judges composing those courts act in independent groups. This is one of the inevitable consequences to be expected from the creation of a multiplicity of co-ordinate courts; and the greater the number of these courts the more numerous the conflicts are likely to be. The great body of the law by which our civil controversies are determined is judge-made, and probably will continue to be for all time. Practically the law of any given case is what the court of last resort says it is. As long as there is no infallible standard by which to forecast what that decision will be, the law of a case must remain uncertain till that tribunal has spoken. The chief annoyance arising from conflicting decisions is due more to the uncertainty which they cause than to any injustice which may have been perpetrated by an erroneous ruling. Under the present status we are unable to know what decision of a Court of Civil Appeals will give rise to a conflict till another case involving the same legal proposition finds its way to another Court of Civil Appeals, or to the Supreme Court. This may occur after only a short interval, or it may not occur for many years. Hence, there is about all decisions of the Courts of Civil Appeals, till approved in some form by the Supreme Court, an element

of uncertainty that renders them merely provisional as authoritative precedents.

If the present system of intermediate appellate courts is to be retained, I would suggest that the jurisdiction of the Supreme Court be extended to all cases where written opinions are required to be delivered by the Courts of Civil Appeals in which any question of law is determined, and that its power be limited to that of revising the rulings of those courts upon questions of law without reference to the merits of the particular controversy. I merely make this suggestion as one for discussion; for I am free to admit that I have not given it sufficient consideration to warrant my own unqualified endorsement of it. Nor do I feel prepared to now suggest further details as to the precise limitations which should circumscribe the duties and powers of the court of last resort under this modification of its jurisdiction. The main purpose we should have in view is to so rearrange the jurisdiction of that court as to dispense with the privilege of two appeals in any case upon the facts, and to provide for an approved declaration of law in all cases. It has occurred to me that a better method of attaining that end would be found in a reconstruction of the entire appellate system so as to have practically but one tribunal, composed of sections upon the following plan:

Divide the State into five Supreme Judicial Districts (or any number, which may be found expedient); in each of these elect one Chief Justice and four Associate Justices, whose term of office shall continue for ten years, one to be elected at each biennial election. Each group composed of the Chief Justice and four Associate Justices should constitute a branch, or section, of the court of last resort in civil cases for its district. The different sections, or branches, should all be located at the capital of the State, and, if practicable, provided with court rooms and offices in the same building. The territorial jurisdiction of each court, or section, should be coextensive with its district over all appeals, or writs of error, allowed by law, under such statutory regulations as may be deemed proper. These different sections should deliberate and decide cases separately, unless for satisfactory reasons they should elect to hold a general conference for the

discussion of any question coming before any one of the sections. In every instance where a case is decided by one section of the court and a written opinion rendered in which any question of law is determined, before the judgment of the court is announced from the bench the opinion shall be referred to the five Chief Justices sitting as a separate tribunal for their approval. The presiding officer of this tribunal may be designated by the Governor, or selected in any other manner that may be provided for by law. It should be the duty of the five Chief Justices to examine the written opinion so referred to them with a view of correcting any expressions or conclusions therein upon questions of law, without reference to the merits of the particular case, and upon the facts as stated in the opinion under consideration. If upon an examination of the opinion they find no error of law they shall indicate their approval and return it to the court from which it came, to be published as the official opinion in the case, and judgment shall be rendered accordingly. But if they should disagree with the legal conclusions expressed in the opinion, they may indicate such modifications as in their judgment should be the law of the case and return it for modification, or they may upon the facts stated write and render an opinion of their own setting forth the law of the case upon the facts as previously stated, which opinion shall be delivered and adopted as the official disposition of the appeal, and judgment rendered in accordance therewith.

The court constructed according to this plan should have jurisdiction of appeals in civil cases only. Confusion might be avoided by requiring submission to the five Chief Justices the written opinions of the Court of Criminal Appeals in cases where the Constitution or any statute is for the first time construed. I think the lines of distinctiveness between civil and criminal jurisprudence is sufficiently marked to justify the organization of separate appellate tribunals except in the construction of statutes and the Constitution. The policy of having the judges sit and determine cases in groups, or sections, instead of acting as one body, is for the purpose of avoiding the delay and tardiness incident to the deliberations and workings of large assemblages. Experience proves that after providing for a number sufficient to insure ample discussion and information

on the subjects under consideration, additions to the membership of deliberative bodies are more hurtful in detracting from individual efficiency than helpful in increasing collective capacity.

I am fully aware of the fact that this plan has many objectionable features, but I think it has some advantages over the present system. It is true the court will be composed of a large membership, but taken all together this will be less than the number of appellate judges now engaged in passing on civil appeals. By locating all of the different sections at one place the membership is brought into social and business contact, and a better opportunity is afforded for formal and informal discussion of the questions that arise, and for the cultivation of personal acquaintance among the members. All of these tend toward the creation of uniformity of thought and action. By making the judges elective by districts, instead of from the State at large, the expenses incident to making a campaign for election are lessened. representation on the bench is more evenly distributed over different sections of the State, and the litigation from each particular locality goes to the judges who are best acquainted with its peculiarities, if there be any. But the most valuable result which I should expect to follow the adoption of this system would be the certainty and uniformity in the judicial interpretations of the law. This feature is, in my judgment, one of such transcendent importance that in order to secure it we might well afford to endure defects attended with less serious consequences.

The modifications which I have suggested both for the trial and the appellate courts are radical in some respects, perhaps more so than should be adopted at any one time. But I submit them for discussion, hoping that by such means we may ultimately evolve some plan that will relieve the present unsatisfactory condition.

SOME RESULTS FROM HOLDING THE LEGAL INTELLECT IN MORTMAIN

BY

H N ATKINSON

OF HOUSTON, TEXAS

The term, "Mortmain," came into the English, from the Latin, through the Norman-French. In the report of the case of Wrotesley vs. Adams, Plowden, 193, it is said it was so called "by resemblance to a man, in his last moments, who holds whatever he takes in his hands, *mortuo manu*, that is, so fast that he never quits it till he is dead."

With reference to real property, Mr. Blackstone defines mortmain as "purchases having been chiefly made by religious houses, in consequence whereof the lands became perpetually inherent in one dead hand, etc." Many acts were passed, in England, between the time of the Saxon kings and the time of George II, forbidding those conveyances, and there is much curious learning, showing the various devices resorted to for the purpose of permitting property to be held in the "dead hand."

The evils of such holdings were recognized in Mexico, prior to the independence of Texas, for by the decree for the settlement of vacant lands, passed by Coahuila and Texas, April 28th, 1832, it was provided that "land acquired by virtue of this law shall from no cause be transferred in mortmain." I have examined many titles or grants made under this law, and this provision forbidding conveyances in mortmain is contained in all of them, so far as I now recall. Holding real property in the hands of the dead is therefore a thing of the past.

But there are so many things in the organic laws, statutes and decisions of our State, devised by men long since dead, which, instead of protecting the innocent and punishing the guilty, have, in actual operation just the opposite effect, and which our courts and the members of our profession feel bound to follow and enforce, that I am constrained to liken our situation, intellectually, to that of property held in the hands of the dead. We submit to laws made by dead legislators, and make no attempt to replace them with something better; we follow the decisions

of dead judges, when the plainest dictates of reason and common sense require that they be overruled. In every other field of human activity, improvement is the order of the day. In our profession it is becoming increasingly difficult, all the time, to tell what the law is, and this applies both to our civil and criminal jurisprudence.

The grip of mortmain on the non-legal mind is outside of this discussion. Were I to hint that we sometimes dream of falling from great heights because some remote ancestor fell out of a tree, in his sleep, for the reason that he was guilty of contributory negligence, in the careless manner in which he had wound his tail around a supporting limb, it will not extend the principles enunciated in *Hadley vs. Baxendale*. Nor will I criticise the Montana farmer who received a patent to his land, duly signed by President Taft and returned it to Washington to be corrected and validated by adding Mrs. Taft's signature thereto. For all I know, he may have been right about it. None of our courts have, as yet, passed on the question. "Sufficient unto the day is the evil thereof."

What I shall say today will bear on the revision and enforcement of the laws which were made to prevent and punish crime, as I believe these laws, in their enforcement or non-enforcement, touch the lives of our people in more ways than does the enforcement or non-enforcement of those which relate to the matters usually involved in civil litigation.

One of the heaviest burdens placed on the citizenship of Texas is the tribute we pay to crime and criminals. There is no way to make an accurate calculation of the extent of this burden, but long observation leads me to believe that from one-fourth to one-third, and perhaps more, of every dollar paid into our State, county and municipal treasuries, is, in some way, expended in the attempted defense of society against criminals.

In addition to this burden, every lock on a door, every fastening on a window, all the vast sums expended for safes and vaults to protect money and valuables, every premium paid for insurance against burglary or theft, every gun or pistol purchased for the defense of the home or the person, are directly chargeable to the fear of those who violate the law.

That the aggregate of these expenditures makes a frightful

total needs no argument. It is so self-evident that common observation and experience confirm its truth, the moment the statement is made.

Now, to my mind, the financial burden thus placed on the taxpayers and property owners of Texas, vast as it is, is not the worst feature of the situation. The feeling of insecurity, especially among women and children, where the work of the husband and father calls him away, the readiness of men to take into their own hands the redress of real or imaginary grievances, and the fact that notwithstanding all that the toilers of Texas expend yearly, in the attempted enforcement of the law, there is no substantial diminution in the volume of crime, or in the number of criminals, present problems that should be met and dealt with. In fact, what I see in the public prints, with reference to homicides and murders, in some of our largest centers of population, leads me to believe that those crimes are probably more common in Texas than ever before.

The trouble seems to be that men have lost the fear of the law, as a restraining force. A man falls out with his neighbor. The quarrel may be bitter and feelings of hate be engendered. The words of the tale bearer may add oil to the fire. In each of them arises the feeling of self-preservation. Each knows that his enemy is angry, and each knows that if the other decides to kill him, the fear of legal punishment will not deter or restrain. From this state of mind to the death of one, or both of them, is but a step.

I presume that every lawyer who listens to me has heard men speak of those with whom they have had difficulties. As I recall them, the usual statement would be something like this:

"Yes, I'd take my gun and kill him if it wasn't for the trouble and expense." That was all. The chances of serving a term in State prison, or being hung for murder, were too remote to be considered. The speaker took it for granted he could escape those penalties. The only thing that made him hesitate was the question of costs and expenses.

Now, were the tribute levied upon the taxpayers of Texas by those who violate the law, sought to be exacted by some foreign government, war for independence would be the only possible

result. But, because our foes are those of our own household, we bear with them as among the inevitable evils.

Our Code of Criminal Procedure went into effect on the first day of February, 1857. Since that date, all prosecutions for offenses against the penal code of Texas have been carried on under its provisions. By its terms, when a defendant is arrested for crime, he is entitled to an examining trial before a magistrate. If bail is refused, or fixed too high, he can apply for habeas corpus to a District Judge. If dissatisfied with the decision of the District Judge, he can take the case to the Court of Criminal Appeals. These three trials of the case may be had before the grand jury convenes at a term of the District court. The investigation by the grand jury makes a fourth trial, and four members of that body can defeat an indictment. If nine or more of the grand jury think proper, an indictment is presented against him, in District Court. He may then be tried before a petit jury and either acquitted or convicted unless the jury fails to agree. If convicted, he can then again take his case to the Court of Criminal Appeals, and there his chances to have it reversed and remanded are just about one out of two. If his case is affirmed, he goes "over the road," and then it is up to the Board of Pardons and the Governor. If his case is reversed, it is remanded for a new trial, unless ordered dismissed from some defect in the indictment. When reversed and remanded, it must of course be tried again.

The difficulty of convicting a party charged with crime, who is skillfully defended, is well illustrated by the case of the negro Oates, at Dallas, who is charged with murder for the purpose of robbery. He has had, as I now recall, six trials in District Court. Once the jury failed to agree. Five times he has been convicted and five times have new trials been granted. No opinion is here expressed as to his guilt or innocence. The length of time it has taken and the difficulties encountered in ascertaining his guilt or innocence are what I am trying to complain about.

It is usual, however, when the case of a defendant is called for trial, for him to seek a continuance to the next term of this honorable court because he can not go safely to trial, at the present term of this court for the want of the material testimony

of John Doe, a witness for defendant, who is at present in County, Texas, and by whom this defendant expects to prove that the said witness was present at the difficulty in which deceased, Richard Roe, met his death, and that, at the time of the difficulty the said Richard Roe used threatening language towards this defendant and made a sudden motion with his right hand towards his right hip pocket, etc., etc., with proper allegations of diligence and all the other requirements of the statute.

And, as it is generally a useless consumption of time to overrule such an application and try the case over the objections of the defendant, the trial judge feels constrained, under the law, to grant the motion and continue the cause to the next term.

Once the application is granted, Old Father Time, the greatest criminal defense lawyer the world has ever seen, becomes fully enlisted, as associate counsel for the defense.

George Ade tells of a runt lawyer, who knew the law from soup to nuts, but he only weighed 90 pounds. When he got up to speak he was only a little taller than a chair. He had no more personal magnetism than an undertaker's assistant. His voice was so weak he could hardly hear himself speak. He could build an iron-clad contract and write briefs that were the delight of the Supreme Court, but he could not talk loud enough to keep the jury from going to sleep on him.

One day the little runt lawyer was sitting in his office in deep distress. He had an important case coming up, and there were two living gas engines on the other side, who could rear up and down before a yap jury for further orders. And the little lawyer man realized his situation, and knew he needed help.

And while he pondered in deep distress, in came a friend of his youth, a book agent named Jim, who was as big as the side of a house and had a voice that sounded as though it came out of an elevator shaft. Jim had a broad, high brow, a regular dome of thought, with less under it than any dome you ever heard of.

Wherever he went, he commanded respect. He could go into a strange hotel, sit down at the breakfast table and say "Please pass the syrup" in a tone that had all the majestic significance of an official utterance. He would sit there in silent meditation.

Those who noted his elephantine form and the gravity of his countenance with the fluted wrinkles on his brow would suppose he was pondering on the immortality of the soul. As a matter of fact, he was merely wondering whether he would take ham or bacon with his eggs.

Jim had the bulk and the awe-inspiring front. As long as he held to a Napoleonic silence, he could carry out the bluff.

The midget lawyer looked up at his mastodonic friend and sighed. "If I could combine my intellect with your horsepower I would be the largest dandelion in the legal pasture."

Then a happy thought struck him. "Jim," he said, "I want you to be my associate counsel. I understand, of course, that you do not know the difference between a caveat emptor and a caviar sandwich, but as long as you keep your hair combed that way and wear that thoughtful expression, you're just as good as the whole Choate family. I'll introduce you as an eminent attorney from the East, I will guard the law points, and you will sit there and dismay the opposition by looking wise."

So when the case came on to be heard, the runt led the august Jim into the court room and introduced him as associate counsel. A murmur of admiration ran throughout the assemblage, when Jim showed his commanding figure, with a large law book under his arm and a look of heavy responsibility on his face. Old Atlas, who carries the globe on his shoulders, did not seem to be in it with this grand and gloomy stranger. He had been rehearsing his opening speech for two hours.

"May it please the court," he said. "May it please the court, the plaintiff desires to announce ready for trial." The musical rumble filled the spacious court room and went echoing through the corridors. The sound beat out through the open windows and checked traffic in the street. It sang through the telegraph wires and lifted every drooping flag. The jurors went pale. The opposing counsel turned white as a sheet. Their mute and frightened faces seemed to say, "What are we up against now?"

Jim sat down and the trial got under way.

Whenever Jim got his cue he would arise and say:

"May it please the court, I quite agree with my learned colleague."

Then he would relapse, throw on a Socrates frown and the other side would go all to pieces. Every time he cleared his throat you could hear a pin drop. There was no getting away from the dominating influence of The Master Mind.

The jury was out only ten minutes. When the verdict was rendered the runt made his escape to keep from being run over by those who wanted to congratulate the distinguished attorney from the East.

The moral is that an Associate Counsel should weigh at least 200 pounds and look wise.

Father Time, as Associate Counsel, is different. He erases evidence from the tables of memory. He changes unfriendly witnesses to those who are more leniently disposed. He gives them opportunities to go beyond the jurisdiction of the court. He removes them by death. In addition he gives facilities to the defendant to secure important testimony that would otherwise be overlooked, and makes chances to create a favorable impression on a juror. He helps create public sentiment in favor of a defendant. He gives time for it to be whispered around that the deceased is dead, anyhow, and placing the defendant in state's prison, or hanging him, won't bring the dead back to life. And Father Time gives other facilities. Facilities is a pretty comprehensive word, but that I may make my meaning clear I will mention a small piece of legal ethics, taught me long ago, and a small incident that came to my knowledge in more recent years.

An old frontiersman once brought suit against a client of mine before a justice of the peace. Upon a trial the justice decided the same in my client's favor, and court adjourned. A few days after this I met the plaintiff and he mentioned the subject of the trial. He had a wonderfully soft and musical voice, and I shall never forget its exquisite intonations as he said:

"Atkinson, I don't blame you a bit for beating me in that case the other day. You only did your duty, as you should have done. But I want to tell you that your client swore a damned lie. Now, I don't blame a man for swearing a lie in a criminal case, where a man's life, or his liberty, is at stake. I have employed them and paid them, with gold, right out of these

hands, to get them to do it. But, Atkinson, damn a man that would swear a lie in a civil suit."

It would appear, however, that to find the witness, to make the necessary financial arrangements with him, and then to properly train and instruct him, so as to fit and qualify him for the witness stand, would take time, and here is where the eminent associate counsel, last referred to, might render invaluable service.

The incident that came to me in recent years, mentioned above, still further illustrates this great truth. In order that you may see it in its true perspective I'll have to present it "slanch-ways," as they used to say in Coryell, or "Antegodlin," as they called it in Bosque.

Kipling, in some of his verse, describes the sailor who has been penned up on shipboard for weeks or months, and who desires to break out, and says:

"Take me somewhere east of Suez,
Where the best is like the worst;
Where there ain't no Ten Commandments,
And a man can raise a thirst."

Now, the man of whom I am speaking had spent some ten days or two weeks, in the custody of the law, as a juror in a murder trial. His arduous toil was finished, the verdict rendered, and he had been discharged. He had not only his warrant, issued to him by the clerk for two dollars a day, but he had other evidences of sudden prosperity, and, like the sailor in Kipling's line, he wanted to go where "there ain't no Ten Commandments." He had already raised the thirst and had made some slight progress in quenching it.

Now, it happens that there are portions of several cities in Texas which fill this description, one of the Ten Commandments having been expressly repealed as to those localities. And, as there is some uncertainty in the minds of many men as to the number of that Commandment, I'll have to count up and see which one it is.

Thou shalt have no other Gods, etc.—That's one.

Thou shalt not make any graven image, etc.—That's two.

Thou shalt not take the name in vain, etc.—That's three.

Remember the Sabbath Day, etc.—That's four.

Honor thy father and thy mother, etc.—That's five.

Thou shalt not kill.—That's six.

Thou shalt not commit, etc.—That's seven.

When Moses went up on the "Mountain of the voice," went into The Awful Presence, up behind the clouds and thunder, where he saw A Hand Immortal, with finger-point of flame, tracing the Ten Commandments on the tables of stone, he probably thought he was witnessing something that would endure until Earth's last sunset had burned itself down to dead ashes. If he did, this was another of these "mistakes of Moses" that we used to hear about. He did not know that thousands of years after he was laid in that grave in "a valley in the land of Moab, over against Beth-Peor," that grave in which no sexton toiled, and above which no mourner bowed, the time would come when the rulers of cities of which he had never heard, built upon a land of which he had never dreamed, would repeal the Seventh Commandment in so far as it related to portions of those cities and *reserve* those portions from its operation.

Neither did he know that in those portions from which the seventh commandment was thus stricken and withdrawn, the other nine would be very much neglected and disused.

"Facilis descensus averno," it's easy to go to hell, was said by the Romans of old, and when this juror, of whom I am telling you, decided to go to that portion of the city which lies beyond the reach of the Decalogue, he thought to make his progress still easier, by going in a hack. The point that I am trying to make, came out in conversation between the hackman and his boss, "in the cold gray light of the morning after." "Henry," said the hackman to his boss, "did John Doe say anything to you about me rolling him for eighty dollars last night?" "No," said the boss hackman, "what was there about it?" "Well," said the hackman, "he was partly drunk last night, and he got me to take him in my hack down to—," and here the hackman mentioned that portion of the city which I have for several minutes, with such shrinking modesty, been trying to indicate, as being short on commandments, "he got me to take him down there in my hack and he showed me a roll

of \$450 that he said he got for being a juror in that murder case, and this morning he came to me and accused me of stealing eighty dollars from him, and he's a blankety blank liar; I didn't do it." Or, at least, such was the conversation reported to me by the boss hackman.

Did you ever, when a boy, turn over a thin, flat rock and see the wriggling, crawling things, trying to get out of the light? Well, that's where I got a glimpse of something under the rock, that crawled and wriggled.

But it takes time to arrange these little matters of detail, and Father Time, the eminent associate counsel I have mentioned, provides the facilities.

The foregoing is based on the system of delays, rendered possible by the construction of our laws, and the organization of our courts.

When a case goes to trial, every possible objection is made, and every exception is reserved by counsel for the defense. No criticism is intended by this statement. On the contrary, it will be said that no lawyer, worthy of the name, would fail or hesitate to interpose, in behalf of his client, every advantage which the law gives him. The criticism is not against the lawyer, who takes the advantage of useless technicalities, but against the law, which gives him not only the right, but makes it his duty to do so.

If a conviction results, all these exceptions are presented to the Court of Criminal Appeals, and, under the rules of decisions by which that court usually feels itself bound, as before stated, about one-half of the cases taken to that court are reversed and remanded for a new trial.

Some of these reversals are because the evidence fails to support the verdict, and to these, I say "Amen." Many of them are for mere technical violations of the Code of Criminal Procedure, as, for instance:

Some five years ago a man named Stephens was convicted of horse-theft in the district court of Henderson county, Texas. On appeal the court held that no error had been committed, that the evidence amply supported the verdict, and the case was affirmed.

A motion for rehearing was made on the ground that the in-

dictment charged that the offense was committed on the 31st of June, 1906, an impossible date. Judge Brooks, in writing the opinion of the court, on the motion, said:

"A majority of the court thinks this position is well taken; but even conceding that any of the authorities cited support the proposition, yet the writer thinks the position is absurd. If the indictment had charged the defendant committed the offense on or about the 15th of June, it could have been the 30th of June, or the 1st of June, and yet a valid prosecution maintained. It does state that the offense was committed in June and the fact that it stated an impossible date in June would be merely surplusage, and would not vitiate a prosecution. So believing, I do not agree with the opinion, but out of deference to a majority of this court, the motion for a rehearing is granted, the indictment is quashed and the prosecution ordered dismissed." See *Stephens vs. State*, 103 S. W., 904.

Last year two men were convicted of robbery in the district court of McLennan county, Texas, and the punishment of one fixed at forty years and the other at forty-one years in the penitentiary. The indictments charged that the offense was committed on the 29th day of February, 1910. On appeal and on the authority of the *Stephens* case above referred to, both cases were reversed and the prosecutions ordered dismissed, because there was no 29th of February. See *McGinsey and Nobles* cases, 132 S. W., 773.

These are, of course, extreme cases. But many others could be cited to show for what slight causes is the work of the trial courts undone. They are cited to show how strongly the appellate court feels itself bound to see that every rule laid down by the Code and by the decisions has been complied with, whether or not it bears on the question of the guilt or innocence of the defendant. The honesty, integrity and ability of that court are and always have been beyond question. But the fact that in doing justice according to law, it feels bound to order prosecutions dismissed against men of whose guilt there can be no reasonable doubt, shows how binding are the ties of precedent and how firmly the court is held in mortmain.

For more than half a century the State of Texas has, under the rules prescribed by that Code, undertaken to suppress and

punish crime. The prosecuting officers have generally been vigorous and faithful. The judges of our trial courts and of our Court of Criminal Appeals are of the best material that the Bar of this State can furnish. And yet, he would be a bold man who would assert that crime is diminishing and that security for life and property in Texas is increasing with the years.

In fact, were our sensibilities not blunted by their frequency, the number of violent deaths in Texas each year would be something appalling. Canada, with a population twice as large as Texas, and with a territory larger than the United States, does not average twenty-five murders a year. More than one city of Texas, with a population not exceeding 100,000 has about double that number of murders. What the aggregate in Texas is, for a year, I do not know. It must be nearly a thousand, "of whom each a ghastly gap did make in his own kind and kindred," as Byron said of the British soldiers, who died at Waterloo.

In Canada the fate of the murderer is imprisonment for life, or death, generally, the latter. And that result is not a matter of years, but of weeks. The result is, as shown by official statistics, a degree of security for life that is not approached elsewhere on this planet. In Canada a man has only three chances of being murdered out of a million. In Texas, he has about three hundred.

Some months ago I was talking with an officer of the United States army, who had recently returned from Alaska. He spoke of a mining camp which was divided by the boundary line between Alaska and Canada. He told me that on the Canadian side they obeyed the law, because it was the law, and, on the Alaska side they violated it, for the very same reason.

There is no effect without a cause, and there must be a reason for the conditions that exist in Texas today. My theory is that we are trying to meet Twentieth Century conditions with the rules and methods of the Seventeenth and Eighteenth Centuries, rules and methods which were devised to protect citizens from the tyranny of their rulers, and which are now interposed as shields of defense for those accused of crime.

There is neither time nor space in a paper and on an occasion like this to do more than make a few suggestions. The first

suggestion I desire to make, is that all judicial districts, composed of more than one county, and all terms of court, as now constituted, be abolished, and that there be organized, in each county, one or more courts of general jurisdiction, ready at all times to open and transact business, whenever necessary.

Let grand and petit juries be selected for a period of three or six months in advance, by commissioners selected for that purpose. Then, when an offense is committed, there need be no waiting for the next term of court. As soon as an arrest is made the grand jury could be impaneled, the case investigated, and, if an indictment were found, the defendant could be at once placed on trial. In this way, any ordinary case should be heard and determined and the defendant either acquitted or convicted, within thirty days from the commission of the offense.

Of course, to this method of procedure the old objection will be raised that it would be an attempt "to railroad the defendant to the penitentiary," but this objection will lose much of its force when we take into consideration the celerity and dispatch with which crimes are committed.

In the organization of a court in each county, with jurisdiction to try those accused of violating the law, and more than one, if necessary, I have mentioned the summoning of a grand jury. But I want to say, frankly, that I regard a grand jury as a useless, expensive and unnecessary piece of legal machinery, and while I would not yet be in favor of its abolishment, I would favor such changes in the organic law as would authorize all offenses to be prosecuted either by indictment or information. Power could be given the trial judges to summon grand juries, by orders to that effect, entered on the minutes of their courts, when, in their opinion, the public interests required it. With the right kind of prosecuting officers, such orders would very seldom be necessary.

Of course we would no longer have the impressive sight of a grand jury returning a paper into court reciting that they were good and lawful men, duly impaneled, sworn and charged, contrasting their righteousness with the wicked conduct of the defendant, but all this could be dispensed with. The grand juries of Texas probably cost the various counties over \$100,000 or

\$200,000 a year. The defendant is entitled to know, in plain terms, the offense with which he is charged, and this can just as well be done by a paper, signed by the prosecuting attorney, who is acting under his official oath, as by a paper signed by a foreman of a grand jury, who is acting under his official oath. There is no need or use in taking twelve men from their homes and business, and in paying them to do the work that one man can do just as well.

Another way in which we allow ourselves to be tied to the dead past is in requiring petit juries to be unanimous in returning verdicts. This is the only instance that I now recall, in which perfect unanimity is required. The Legislators, who make the laws, under which the juries act, do so by a majority. The judges, who review their verdicts, approve or disapprove them, by a majority. The Supreme Court of the United States decides the most momentous questions by a vote of five to four.

There is no absolute uniformity in nature. Every blade of grass differs from his brother. No two leaves of the forest are ever of precisely the same form and structure. In all the sands, on all the shores of the world, no two grains are ever exactly alike.

Men differ in their opinions about everything on earth. No elections are ever unanimous where candidates oppose each other. (To keep the record straight, I now except from this remark, one or two counties, "way down on the Rio Grande.")

The requirement that verdicts be unanimous very often defeats justice, as every lawyer knows. It should be provided by law that nine members of a jury should return a verdict in every case except where the death penalty is inflicted. In that case, the verdict could still be unanimous. I make this concession in deference to that policy of the law, which appears to become suddenly aware of the sanctity of human life, and, especially of the life of the defendant, *after* he has been duly indicted and placed on trial for a capital offense. Until he reaches that exalted position, he must scuffle 'round and take his chances with the balance of us. Probably 1000 will die by violence during the next year in Texas.

In the case of a conviction and appeal the rule governing the Court of Criminal Appeals should be written into the statute

that no case should be reversed by that court, either for the admission or exclusion of evidence or for the giving or refusal of charges, where substantial justice had been done in the lower court.

I would also give the appellate court the right, where there are different degrees of an offense and that court was of opinion that the conviction was for a higher grade than the evidence warranted, to reduce both the grade of the offense and the amount of punishment, and then affirm the judgment of the trial court.

President Taft, in a recent utterance, said: "No judgment of the court below should be reversed, except for an error, which the court, after reading the entire evidence, can affirmatively say would have led to a different verdict."

Last year the American Bar Association recommended that a statute of the United States should be enacted as follows:

"No judgment shall be reversed, or new trial granted, by any court of the United States, in any case, civil or criminal, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court, to which application is made, after an examination of the entire case, it shall appear that the error complained of has resulted in a miscarriage of justice."

Almost the last public utterance of the late Justice Brewer, of the United States Supreme Court, was that "the reversal of a judgment by an appellate court, on the ground of a mere technicality, where substantial justice has been administered, is an outrage."

We have the obsolete methods of criminal procedure that obtained in England, before the American Revolution. The English themselves have long since reformed these methods, and they now enforce their criminal law with a celerity that is exceedingly disconcerting and discouraging to those who violate that law.

A year or two ago a student from India killed an officer of the Indian Government, in London. In twenty-three days he was tried and in seven weeks he was hung. It is hardly necessary to refer to the Dr. Crippen case. He had murdered his

wife, buried her in the cellar and fled the realm. He was arrested in Canada, and, within about ninety days of that arrest, he was hung.

It is said that British justice is merciless. But the next day after Crippen's conviction, his wretched paramour, who had lived with him after his wife's death, and who had fled with him, disguised in boy's clothing, was placed on trial in the same court and before the same judge, charged with being accessory to the same murder. She was promptly acquitted, under the charge of the court.

The result is that London, the largest city that was ever known, with a population of nearly seven and a half millions of people, has fewer murders than some Texas cities with little more than one per cent of its population.

The failure to convict men charged with crime, and the frequent miscarriage of justice result largely from delays caused by the way in which our courts are organized, and from our antiquated methods of procedure. In the anxiety to guard the rights of those accused of crime, on the part of the makers of our constitutions, statutes and decisions, the right of society to have crime prevented and criminals punished has been relegated to a secondary place.

If those who contemplate crime were fully advised that it was practically certain that unless they became successful fugitives from justice it would not be a matter of months or years, but of only a few days before they were placed on trial, that the time for obtaining favorable testimony, for creating public sentiment, or getting a "sinker" on the jury would be extremely limited, it would prevent many a spasm of the trigger finger, and stay the hand of many a man from being lifted against his fellow.

If such a system of laws were enacted, it would be not alone the deserted and friendless who would tread the bitter path to punishment. I believe that it would soon be possible to try and convict well-to-do and influential citizens who were guilty of atrocious crimes and hang them, according to law.

Bulwer closes his great novel, "Paul Clifford," by a quotation from John Wilkes, the famous London agitator, of the Eighteenth century, that "the worst possible use to which you

can put a man is to hang him." I want to qualify that statement by saying that a great deal depends on the man and on the crime which he has committed. If the evidence clearly shows that he has been guilty of murder in the first degree, if he has gratified his malice by killing the object of his wrath, leaving to the deceased only enough of life to know that he has died by the hand of an enemy, if he has been guilty of the nameless outrage against womanhood or girlhood, if he has committed murder by poisoning, torture or for the purpose of robbery, then the very best possible use to which you can put that man is to hang him.

Once let it be understood that the law is swift and sure in "plucking offenders from the mass to judgment," then that horrible paradox known as lynch law will become a thing unknown. Then a lot of armed citizens will not feel called on to show their contempt for the law and their distrust of the courts by taking a prisoner from the court room and breaking his neck by throwing him out of a window, as happened in one Texas city in recent months. Neither will they feel called on to save society by lynching a twelve-year-old child, strangling him to death with a trace chain, as was done in another Texas county a few nights ago.

I am glad to see that the Governor of Texas, the Attorney-General's Department, and the officers of that county have taken vigorous action in this matter. But, O, that it had never happened! I really do not believe that when the Master spoke of children coming to Him, he desired or expected them to be sent by such methods, and with such marks on their little throats. Isn't this an awful story for the winds and wheels and wires to bear to our brown brothers and sisters who dwell in the lands to the South? Did ever far-sent devil, as he winged his way from the regions of the damned, to execute His Infernal Master's will on some tortured planet, carry a message of blacker or more malignant hate? Our cheeks would not flush with pride, could we hear and know what is said and thought of us, among all the millions of the race to which that dead boy belonged.

McCauley said that the "Anglo-Saxon was capable of every virtue except humility, and of every crime except cowardice." That mob had the humility to do its work in the night, it had

the cowardice to attack and kill a defenseless little Mexican boy, who weighed about forty-five pounds. And this proud State must bear the withering disgrace, the blistering shame of their infamy. God must indeed be asleep, or gone on a journey, somewhere, away among His far off worlds, if Texas tolerates such deeds as this, and He make no sign of His consuming wrath.

Now, one or two additional thoughts, and I have finished. Twenty years ago the old battle-ship Texas was built. She saw something of danger and glory at Santiago, when the fleet of Spain ceased to exist. But the world of science in ship building had gone by and left her. She was no more worthy to take her place in the fighting line. "Couldn't come back, etc."

For sentimental reason her name was painted out and she was rechristened the "San Marcos." She was anchored in Delaware Bay, in shallow water, to be used as a target for modern rifle fire. For nearly seven miles away the twelve-inch shells were sent, each a half a ton of steel with its charge of high explosives. At that great distance nearly every shell found its mark. The havoc and destruction were awful. In a few minutes she was torn, riddled and sunk. Never was an old battle-ship placed on the scrap pile in such a dramatic way. In the doing it was as remorseless as Fate, as pitiless as Death.

But the Texas is not lost from the roster of our navy. Already a new ship of that name is taking form and shape. She is to be more than four times as large as the old, and in engine power, in armor and in armament, she is to be the last word that naval science knows, a "dreadnaught," indeed, one of the world's giant ships of war.

I hope the time is coming when men will gather no more to destroy each other in the central hells of fight, that the day is at hand—

"When the war drum throbs no longer, and the battle flags are
furled,
In the parliament of man, the federation of the world."

But if the "last argument of kings" must be met, if the sun shall rise on that grim day of Armageddon, long foretold, when the blue-green of the shot-torn seas shall turn to purple in blood

and flame, then the new Texas will have her place in our battle line, able to speak with our enemies in the gate, fit to fight for the life of this Republic, worthy to bear the name of this imperial Commonwealth.

And one of these days the old code of which I have been speaking will be put aside. It will be laid on the scrap heap with the old ships that the world has outgrown and the old systems that have "had their day and ceased to be."

Texas has no foes, save those who violate the laws; no enemies, save those who menace the lives and property of her citizen, and cause her taxpayers to bear the unjust burdens of crime.

And one of these days shall the people of Texas command that new rules be made for the construction and operation of their courts, rules for which the wisdom of all peoples shall be laid under contribution and levies made on the benefits of all experience. The sole purpose shall be to ascertain, as speedily and as certainly as possible, the guilt or innocence of every one charged with crime, to acquit him, if innocent, to convict and punish him, if the evidence shows his guilt.

And when this code shall be adopted, then will Texas be able to speak to her enemies, not only in the gate, but in the courthouse; then will she have a system of laws fit to protect those who have done no wrong; then shall the grip of the "dead hand" be unloosed, and the intellect which interprets and enforces our system of jurisprudence no more be held in mortmain.

STRUCTURAL AND ECONOMIC CHANGES

ADDRESS BY

HON. MARTIN W. LITTLETON

OF NEW YORK CITY

INTRODUCTION OF MR. LITTLETON BY PRESIDENT GLASS.

Texas is proud of all her sons who have achieved prominence in any line, and we can boast of having furnished the business world and railroad world some of the ablest men in those particular lines that the country has produced, and who have attracted the attention of all the country round. We, as lawyers, are especially proud that we have given to the metropolis of the country a man who has attained highest rank and standing as a lawyer, as a public man generally, who has been recognized as the leader of the Democratic party in New York, recognized by the National Convention as one of the most gifted orators of the entire country, and who has favored us with his presence today and will deliver the annual address. I take pleasure in presenting to you the Hon. Martin W. Littleton of New York. (Applause.)

ADDRESS OF HON. MARTIN W. LITTLETON.

Mr. Chairman, Members of the Association, Ladies and Gentlemen.

There is one thing which is always happening. It is one of the things which happened to me yesterday. It seems always about to happen or always happening—the fact that I am always predestined to be tardy or late. I do not know just why it is. I never seem myself to be conscious of arranging to be late. I never have myself planned to be late. I have always planned to be on time. When I came down to Texas on this trip, I had but one thing in view. That was that I should be the guest of the Bar Association of the State and talk to them and with them, as a member of the Bar and as a former resident



Monte A. Dutton

of Texas, about things in which I supposed they were interested, and in which I feel myself to be interested. I was asked, and gladly yielded, to go to my old home town, where I lived a great many years, in Parker county. In fact, I was admitted to the Bar before Judge Patterson of that district so many years ago that I am getting a little sensitive about saying how long it was. I was notified by a notorious brother of mine that he could drive me down in an automobile across the plains to Fort Worth, and that I could then take the train and come down comfortably last night to Waco, and that I would be here to keep this engagement, towards which I had looked for many weeks and months. Well, the usual thing happened. We arrived in Fort Worth, and I was notified by a man of more or less gold and glittering attitude that the train had gone; one of those uncomfortable creatures who never says to you, "I am very sorry the train has gone. We will make up a train or we will do something." He gave me just the cold, bitter, bleak announcement of the result—the train had gone. I had to send a telegram to Sanford, and as I sent it I knew what he would feel. I knew what I felt. I was glad I was as far away as Fort Worth, if he had to get the telegram, or I had to send it. So I make these apologies. I am getting awfully tired of making apologies, as I have been doing it the last three weeks, and I do not feel guilty, except that I do not feel that I have got the get up to keep an engagement. I am beginning to despair of my own ability and judgment on the subject.

I come back home today with two distinct and predominant sensations. One is that I am greatly honored, much more, in my judgment than I deserve, in being asked to come to the Bar Association of Texas and deliver the annual address, and I will tell you why. I always feel, when I start a long distance to make a speech that the distance grows greater and the speech grows smaller as I proceed on my journey; and there comes a time when the conviction overcomes me: "Why am I going so far to say so little?" The amount I have got to say grows less, and the courage with which I have to say it grows weaker, and the consciousness of the truth of it grows more disturbed, and the satisfaction with it grows less as I approach the place where I am about to say it.

I am not old, I am not young. I have reached that nebulous place in middle life where a man is in the current. He is not quite sure that he ought to go with the current, but he is not quite satisfied what place on the shore he ought to land, and so he is paddling along. He thinks he is really rowing. He is not. He is drifting. And I have that feeling today—incertitude, the lack of knowledge, the inability to reduce certain things down to real facts; and as I grow older—and I am not so old, I hope!—as I go along in years, that feeling goes with it, that I know so little, as we used to say, “for sure,”—that I can be sure that I know and can say to somebody, “This I know. You must listen to me about this.” So, when I come to an occasion like this, that conviction grows on me, and the distance only adds to the intensity of the conviction, and I grow more and more weak as I approach the point where I am about to express my opinion.

I have always felt, and I continue to feel every time I return to this State, a sort of sense of fellowship with everybody that I meet, whether I have known them before or not, because there is, after all, in the sustaining friendship, if not affection, of your friends, people who know you, the thing which makes you struggle to win. If I were to return to Texas and nobody asked me to go anywhere, or to be anywhere, or to meet anybody, and they simply said, “How do you do?” and passed me by, I would know instinctively there was something essentially wrong with what I was when I was here, or what I have been since I left here. And the converse of the proposition is just as true, that when I return and people try to do me great honor, and do do me great honor, I am quite sure that they believe, at all events for the time being, subject to revision, as every judgment of every man is, and believe up to this point that I have not done anything which would be discreditable to a young man going from this State to some other section of the country. And a consolation comes from that fact, a gratitude, which I feel honestly I could express much more beautifully in silence and humility than I could in any attempt to exploit any idea I have about any public subject, or to give you my opinion about any particular thing that I know or feel. And the overwhelming conviction I had yesterday in my old home town, in which I

grew up and felt that I knew the men and women; the conviction I had as I sat in the old courthouse where I was admitted to practice law, and the men whose faces I knew came back to me, all recreated and identified from memory after so many years have passed; the feeling that overcame me was that I would rather fold my hands and silently enjoy the grateful recollection, in the midst of a humility which I honestly felt, than to get up and say, "I would like to make a speech to you all. I would like to tell you what I know;" for I felt as if I knew nothing yesterday except that I was back among my old friends. I feel just as much at home in Waco, and yet I do not know so many people; but the overwhelming sensation I have today is that I would rather say, "I am glad to be here and meet you. I have nothing new to tell you. I have nothing to tell you which you probably do not already know better than I, and greet you, and I receive your welcome, and I enjoy riding full-tilt right into the bosom of your hospitality." With that I would rather stop, because I am not conscious of any ability to tell you anything that you do not already know better than I.

Still, my friends, I suppose we have all lived for many years in different sections of this country. I was thinking this morning how different this country is from any other country of which I have had any observation, and about which I have had any knowledge. We are a migratory people. In England if a man is from Yorkshire, he is always from Yorkshire. His children will always be from Yorkshire. If he is from Lancashire, he will always be from Lancashire the next two centuries, if you heard from him. If he is from up on the North Sea, or from Ipswich way, or from Scotland, or from Surrey, he will always be from Ipswich or Surrey, or wherever he comes from. The same thing is true in France. Beside, there seem to be no people in the world outside of Paris more satisfied, better contented, better settled, better equipped for the enjoyment of life than the peasantry of France; yet if you go to Rheims, or Bretagne, or Normandy, or if you go down south in the chateau district, you never think of people migrating from one state of France to another, except in exceptional instances. If you go to Germany it is a rare thing that you find them doing it. Ours is the one country in which the distinguishing feature is

that no man who lives in a State was born in the State, as a general rule. Take this State of ours: Fed by all the old Southern States, participated in by New England, sometimes added to by Europe, occasionally brought in from the Northwest or Colorado, but really the State is the result of the migratory instincts of our people. Take New York. In New York City alone there are probably 150,000 Southern men. They have gone from the old Southern States. They still continue to go. They have a right to go, because I may say, by the way, that I believe New York City intends distinctively to give the Southern man the inside track in any contest that is on. I do not know why it is so, but they seem to do so. So getting back to the point I wish to make, although I have adopted New York as my home, and I love the State, and the people have been kind and generous to me, just as this State has been kind and generous to people from New York. I do not feel that your character in this country can mean anything like it means in the older countries of the world. And in this country particularly, as we go on breaking down the barriers of State divisions, with great transportation development, reaching through the areas and conquering distances, we cease to be provincial; we cease to be identified as citizens of this State or that State, and we become more and more to be identified as American citizens. I am proud of the fact that Americans have been so catholic and broad in their judgment that as they meet together in the North or South they ask each other no such narrow question as, "What State do you come from?" with a view of judging you accordingly; but they ask, "Do you belong to this country?" and if you come from the South or West or East, after all, "Is your standard that of an American citizen?" (Applause.) As a matter of suggestion, if before 1860 the great transportation systems from the North had penetrated the South; if the arteries of trade from the South had penetrated the North; if there had been what we naturally would have expected to have had—the exchange of the products of a cold country for the products of a warm country—which seems never to have been the course of trade in America; if the development of this country had been of the great arterial courses of commerce between North and South instead of East and West; if the South had known commercially the

North and the North had known commercially the South, and if they had been brought together under the great leveling influence of that particular thing known as commerce, I do not say it would not have happened, but I do say there would have been much less likelihood of the great strife which occurred between the North and the South, which finally did ensue on the questions of slavery and secession and the sovereignty of the States. Now, happily those things are disappearing and have disappeared, and I am glad to know that many Southern men have gone North, and I am glad to know that many Northern men have come South, because the men who landed in New England and the men who landed in Virginia were essentially men of the same general principles, if not the same environment. Dismissing this subject now, when I come back South, I come back Southern for 250 years, for so far as I know there is no blood back of me that was not born and schooled, or unschooled, in the South and in the Southern country, and yet I am glad to come back and say to those who know me, that I have found none of the prejudices and passions of New England or the East against the Southern man, as I do not believe there ought to exist or does exist in the South prejudices against those people when they come here. (Applause.)

I was asked to deliver this address some time ago. I really ought to have apologized to the lawyers particularly, or, rather, I ought to state my excuse, because the lawyer of all men will understand it. As a practicing lawyer in New York, expecting not to be elected to Congress, I decided to make a canvass, and I struck a revolution, the extent and depth and reach and width of which I did not understand, and I was, so to speak, hurled into Congress; and since that time I have been trying to find out how a man could be a professional man in New York and at the same time a Representative in Washington, and the ubiquitous problem involved in the thing has been more than I could understand or solve. When I accepted this invitation, I expected to come here, and after the fashion of these occasions, to read a very deliberate and well considered paper upon the question or subject which I had chosen, but I found that not only impossible, but probably less pleasant, although perhaps it would have been more instructive if I had done so. I made

up my mind, however, that I would come in a homely, blunt way, and indicate to my friends and those who have been kind enough to ask me to come here, some things which, in my judgment, had occurred and were occurring in the structural and economic changes of our country, and if you will be but patient with me, I will promise to be as brief with you, while I do what I have set in my mind to do before this particular assemblage.

You know and I know that in the beginning men start out partisans. I am brought up a Democrat. You are brought up a Republican, or the other way around, and so we set out to justify, to prove, to establish the wisdom of the particular policy for which our fathers stood, or our families stood, or our friends stood, or our communities stood. Now, in my opinion there never was a time, certainly not within the conscious recollection which I have, and in which I have been able to observe events or their deductions, or be taught by others, in which there was less of attachment by the individual to some partisan standard and less of reason which he could give for his position than there is today, in the great economic and structural development of this great government of ours. I have refrained from discussing mere questions of law. I have refrained from preparing myself to talk about how this case was tried, or how that ought to be tried, or the forensic efforts at the Bar of the great lawyers who win this case or that, or who do this distinguished thing or that. I refrain from telling you how to reconstruct or reform the judicial code or accelerate trials. I have refrained from all those things, because I have been, the little time I have lived and the service I have rendered, simply a lawyer in the pit, conducting myself under the rules of law as I found them, and I have no particular remedy for the law's delay. I know of no way to cure the old-fashioned and prolonged and prolix litigation which we are accustomed to know, and I know of no way to change that thing, and I am not going to give you any half-baked ideas on that subject, because you are probably better posted than I am, and certainly have got men better entitled to give you ideas on that subject, and I am not going to give you mine. What I am going to talk about is just a little bit more general, and yet I think you will realize the force of it and the real truth of it.

We are today in the midst of what I regard as the most critical economic and structural changes in the government itself and in the development of this country. It is a trite thing to say that when the Articles of Confederation had ceased in the minds of everybody to be an efficient instrument for the government of this country at the outset, when everybody knew that they were mere ropes of sand by which more or less statesmen had attempted to preserve all the sovereignty of the colonies and at the same time had tried to create a general central government—it is a trite thing to say that they were overturned and in a revolutionary manner. When the Articles of Confederation were abolished and the Constitution was adopted, if any man cares to examine it with critical judgment and comes to any conclusion, he knows that they were overturned in a way that was not provided by themselves and was absolutely contrary to the manner in which they were adopted. But nobody asked any questions about it. They came together to frame our Constitution. It has been said that Madison was the father of the Constitution, and it has been claimed that Hamilton was. It has been claimed that Webster was—not Daniel Webster, but the Philadelphia Webster. It has been claimed that Witherspoon of New Jersey was. Each man had some general conception of the Constitution of the United States, but after you read the proceedings you come to the conclusion that not only were none of them willing, but they did not dare to undertake to make the Constitution a great instrument, an affirmative instrument, for the creation of a great Democracy on this continent. They did not dare to attempt it for the reason first, that human slavery had become a fixture in and part of this section of the country, and all were responsible for it, both North and South, and so they set to work and made a Constitution that was really simply a group of restraints and limitations. It was not what the older Democrats had conceived of. If they had let Mr. Jefferson alone write the Constitution, it would not have been a group of restraints. It would have been an affirmative instrument, establishing the bold and militant Democracy of a new country. If they had let Mr. Hamilton write it alone it would have been imbued with what was called at that time—which I think more or less unjust—the pro-British instincts of

the man who feared to trust a great and dominant Democracy of the country. But whatever might have been the fears and apprehensions of that time, the fact is it was assembled together as a group of restraints and limitations upon which they could finally agree, and so the Constitution was adopted.

We know what happened afterwards. We had an agricultural country. The Democratic party became the dominant leader for fifty years in the control of the affairs of this country. As long as you make a party dominant and continue to make it dominant, it breeds strong and powerful men, and the minute you outlaw it and drive it out of power, and cease to give it honor and place and preferment, there is an element of weakness that springs out of the very bosom of the party, and no man who comes out of it seems to be fit to lead it. And so for fifty years, speaking generally, in the triumphant fifty years of the first control of the government, it seemed that we had a perfect swarm of strong, able, patriotic and brilliant men, who were willing and anxious to, and did lead this country in its constructive policy. Time ran along. They all knew—we know now—they knew quite as well as we, that they had left in the bosom of the organic law of the land the one seed which sooner or later was bound to grow, and to flourish and develop, and would destroy that instrument or reconstruct the government; and as we look back now, if we fairly consult our judgment and teach ourselves the lesson of history, we know that slavery was foredoomed by every sign and token of civilization. There was no chance for it to survive, and yet they knew they could not precipitate the question then and there, nor settle the question. And so the thing went along, until the great, brilliant, captivating, fascinating Clay of Kentucky, fertile of compromise, splendid in his oratory, wonderful in his ability, absolutely bewitching in his personality, seemed to dominate everything with one compromise after another, until he had smothered the deadly thing with a series of compromises. And yet there came a time when five parties developed in this country—practically five. There were Douglass and Lincoln and Breckenridge and Bell, and what they called the "Copper Heads" of the East, strange combination of men. Then there came what we all know, and like war always happens. I heard the other day a curious

thing. It seems that all the wars which have been declared have been declared in April. I never looked it up, but a man told me the other day, and he seemed to be a well informed man, that all the wars which have been precipitated with which we have had any connection, have been a sort of April fool affair. They began in April, and they have all been precipitated, and the wars of the world have been precipitated, by some untoward and inconsequential circumstance which did not affect the vitals nor the economic policy of the country. However that may be, we know this awful thing separated us and there was war between the South and the North, and our party—I speak of it now, I hope, not offensively—the party with which I belong, devoted itself to the cause of human slavery, and having done so, it went down to defeat, to discredit and disgrace in the eyes of the entire nation, so far as the body politic was concerned, and it never revived again in fifty years except with one man on two occasions.

Now, that was the great change, and the only underlying great fact which accompanied that change was the nationalizing process which was bound to occur if we were to be a nation, and I am going to talk plainly about it, because I am not running for anything. (Applause.) The one nationalizing thing that occurred as a result of that great struggle was what we, or our party in the early day had so strenuously denied, and that was that this should ever become a strong nation, with a definite and consistent solidarity. But the war settled it for all time, the fact that the nation was a nation, and it settled it so definitely and so conclusively that since that time many things which ought not to have grown up have grown up, and many things which ought to have occurred and were justified have occurred.

After the war was over and we of the South—and I speak of that because I am able to be perfectly frank with you; my father was a lieutenant of the Federal army from East Tennessee and fought with the Union, and my mother's people were Confederate soldiers, and I can not take much sides under these circumstances and be safe. (Applause.) I say we of the South were outlawed, disappointed, bewildered, because the South had come to the conclusion when the war started that with the dom-

ination of all the affairs of the country which they enjoyed, with their great power and their great wealth, they could do almost as they pleased. They looked upon the North, which was true, as a less cultured and a less developed section of the country, but the South did not realize that the North could just furnish thousands upon thousands of men, and it was like rubbing two pieces of chalk together. If you rub them together the bigger piece is bound to last the longer. They did not understand that particular point until the war had ended.

Now, the structural change that took place then was one in which the nationalizing process became a definite thing, which any one who reads and surveys events could know and understand. We had not known anything about corporations. We did not know about labor-saving machinery. We were of all nations on the face of the earth the most individualistic that the world had ever seen. We were perfectly crass and crude and almost barbaric in our devotion to the doctrine of individualism, and properly so. Why should any man have any theory of possession of property collectively, or any of those things, who was living in a country whose boundless territory had not been explored, whose inexhaustible resources had not been touched, and whose great mineral mountains had not been scratched to extract their inexhaustible wealth? But there came a time, my friends, I think beginning, roughly, about thirty years ago, when two things happened. There was invented labor-saving machinery. I hope you will follow me in this. I do not want to be tiresome to you, but yet I am awfully interested in what I have got to say, because if I haven't got something to say about a fact I do not want to talk at all. There came a time when labor-saving machinery was developed, as it was bound to be developed in an inventive and free race. They had fought for ages for religious liberty. You and I have the right to go and worship God in any way we see fit, and we look upon it now as if it were a sort of an oft-told tale, a thing that had faded into the past and meant nothing to us. Nevertheless that contest had been waged. They even fought for their personal liberty, the right to move about upon the face of the earth whenever and where they chose without interfering with other people's liberty, and to discover and to appropriate, under proper au-

thority, the thing which was theirs by reason of their labor. So they were conceded the next right, the economic fact, the right to own and to control property, and then they exercised the four great rights of religious, personal and economic liberty and their personal security, and that, it seemed, was enough, because there was no conflict. But then came along a man who invented a cotton gin, and another man invented this, and another man invented that, and suddenly we found that one man with a machine could do more than one hundred men could do the day before, speaking in figurative language. In other words, we found the productivity of labor had been increased an hundred fold by the ingenuity, the genius and the development of the human race. Then suddenly there came along the device of the corporation, and we found that capital, by the device of the corporation could handle an hundred fold more of the products of this labor-saving machinery, by reason of its capacity, its mobility, its flexibility, its power, its concentration, its conduct. There sprang up all over this country the corporate device, in this State and that State, and we ran from thirty States to forty States, and from forty States to nearly fifty States and nobody thought anything about it. We saw our men capitalizing values through the device of the corporation, but because of the impersonal character of it it gave us no concern. We went along and said, "This is a great world, and these men are captains of industry. They are doing wonderful things." We did not challenge these things as we should have done. So the thing went on, and suddenly we discovered what we know now, that in the United States today there are, according to the sworn reports, 262,000 corporations. Their capitalization is fifty-one billions of dollars, and their bonded and other indebtedness is thirty-one billions of dollars, or a total of about eighty-two billions. Their net revenue is \$3,400,000,000. We know, of course, that there is a great deal of what they call water in the capitalization. Any man who knows anything about how they do these things knows that. But even with all the water they have \$3,400,000,000 of income, net, which is sworn to in the reports filed with the Commissioner of Corporations in Washington.

Now we turn over to the other side and we say, "How about this agriculture with which we started?" because agriculture

was the thing, the naked ownership of property was the thing, with which we started. We look to the farm and we find their gross income was eight billions of dollars last year. If you subtract from that the amount of the cost of production you leave a net income which would make the net income of the corporations and the net income of the farms very far apart.

Now, you ask, "Why are you saying all this?" I am trying to show you what I have come to see for myself, the economic change that has come in this country in which we live. Not as a politician, not as a candidate, not as a Democrat, not as a Republican, but as a man, I am trying to see if I can find out what really is happening, to know where I am moving, and what I am seeing, and what I am deciding, and what conclusion I may come to when I find that out. I said to myself, what does all this mean? I began to rummage around to see what authority there was on the subject. I picked up the most admirable book I have read in many a day, and I commend it to you. Dr. Eliot of Harvard has written a book which he has called "Collectiveism," a very small book, in which he elucidates the matters upon which I am touching in his perfectly lucid style, and passionless as a stone, and free from ambition or bias or prejudice as any man possibly could be, because the old gentleman, in the rich gathering of the years, illustrious in his service to learning; clear in his head, and devoted, I believe, to the best ideals of his country, has retired now to write the results of his experience. He wrote in this book—and I would not claim it for my own, but I want to repeat it to you in the stumbling phrase which I can employ—that collectivism was represented by this corporate ownership of which I speak; that is, that by reason of the device of the corporation, the mobility, its capacity to distribute values, the fact that you can incorporate these values around here in a block and distribute them in an infinite degree and to an infinite extent and everywhere, and still secure in every unit of the distribution the incorruptible and unassailable ownership of property, the right of private property was imbedded there against all the assaults of socialists and agrarians. He says that in that particular device is to be found finally the defense against what otherwise would be a portentous subject in this country, and that

is, the socialization of property. His opinion is that the collectivism of corporate development, representing almost one-half of the net earning ownership of this country, is the one thing to which we must look as against those men who are crying out that the ownership of vast property has come to such a point that it is a danger to the public that must be met by the socialization of property. He says that the defense against socialism is to be found in the right use and the right ownership, the right control and right development of this curious device known as the corporation. Now, I do not mean to say to you, and I do not think you believe, that I am here holding any brief for any particular corporation or any group of corporations. If I am trying to do anything on this earth it is to try to find out where I can put my feet and feel that I am standing on firm ground. I have no other desire. I want to see if I can not strip my bosom of prejudice and my mind of ignorance, and leave in its place a knowledge of the growth and development of this country, because in my opinion we stand today in front of an economic problem vaster in its portent and its reach than was the great economic problem devolved in the abolition of slavery and the destruction of that character of property in the '60's. In my own humble opinion, the problem confronting the statesmanship of America today is this: How can we preserve the intrinsic merit, the value, the almost incalculable benefit of centralized industry, endowed with labor-saving machinery, and at the same time strip from the outside its oppression and tear from the inside of it its corruption. (Applause.) I say to you frankly here and now, I would not inveigh against corporate development. What was partnership business twenty years ago is corporate business today, and I think the man, if I may be harsh—and heaven knows I do not want to be harsh against any person—I think the man who inveighs blindly against these agencies of civilization, without trying to analyze and understand them and control them, in my opinion either has not studied the question sufficiently to give his opinion to the people, or else he is a wilful demagogue endeavoring to arouse strife. (Applause.) I do not know your corporation laws in Texas, but in my State I think the one thing that is absolutely essential to do, and I think the lawyers here

surely will agree with me about this, is to safeguard the method of incorporation. The difficulty in America has been that the initial safeguards to the incorporation of concerns have not been sufficient. They are not sufficient today. You and I and any person in your office can get together and incorporate a concern by going and applying to the Secretary of State for a charter and issue stock, and start it out on the road, and let the people buy the stock, irrespective of whether those shares of stock represent value. That is the first fraud. The second fraud is that if the stock is issued beyond the value of the property, if it is a public service we derange and demoralize the service, and if it is a private service we skimp the service by declaring a dividend when we have no right to declare one. In other words, to use the phrase of an extraordinary man who is long since dead, "No share of stock ought to be allowed to be issued until it is able to hold up its little hands and say, 'I know that my redeemer liveth.'" (Laughter and applause.) We may as well come to that point, and everything short of that point is dishonest. Take Germany, for instance. They went along under our system, but finally they demanded that any man who applied for incorporation must apply to the courts of Germany, and they took it away from the administrative branch of the government, which we must do, in my opinion. Why should the Secretary of State, because you pay him a fee, authorize you by a piece of parchment to do everything, almost, which may be a perfect swindle, and fill the whole country with stock of no value? The discredit in which corporations have been brought has been largely caused because so many people have been swindled in that sort of thing. The honest corporations suffer from it. In Germany you must apply to the court. The court looks over your application, and sends an officer to investigate what you have got to represent this capital, and if it is equivalent to the capital he reports back, and his charter, if it is all right, is decreed, and he goes out with his decree to operate under, and thereafter in Germany, rich and poor, high and low, great and small, know when they buy a share of stock that represents value unless somebody corrupts it afterwards. At any rate, when it starts he buys a share of stock which represents value. They do not have to pass any anti-monopolistic statute and say,

"If you combine with somebody else, we will have you indicted," because whenever they transcend the four corners of that charter, they say, "You got your charter from us. You have not kept faith with us. Therefore, we will wind you up." I believe, as I had an opportunity to say to Governor Wilson of New Jersey; he may establish—and heaven knows, I hope he won't—the initiative, referendum and recall—(applause); he may do as he pleases; he may be elected President, and I am not here to gainsay him, or to deny him that privilege, if he can win the place; but I do say that in New Jersey, which is fettering with the absolutely foul, indefensible practice of creating fraudulent corporations, he has the chance today to lay the axe to the root of the one vice which has made possible all these things which we now cry out against as predatory wealth, and that is the creation of these corporations to let them go and combine anywhere and everywhere. (Applause.)

I have said enough about that subject, and I shall say no more. That is the only suggestion on the economic line. You can see if I am right in my figures, and I know I am right. No, honest and intelligent man in this country can afford to blindly inveigh against one class of property or another class. In other words, values are translated and transmuted in each way, in different shapes and forms, and hence the corporate device, properly used, honestly administered and strictly supervised, ought to be and will come to be, in my judgment, the most effective and most useful servant of the human race.

I have got one other suggestion along that line, and that is this: What are the structural changes which the economic changes themselves require? This, I know, is going to shock some old-fashioned Democrats, but I can not help it. The Federal Government of this country, it was insisted by Mr. Hamilton, should be a central, strong and powerful government. It was insisted by Mr. Jefferson that it should be born a popular Democracy, that it should issue, full armed and full panoplied from the bosom of the people, for if there was anything he stood for, in darkness and in light, in season and out of season, it was for confidence in the average judgment of the average man. If there was anything which Hamilton represented, it was the fact that he did not trust the average judgment of the

average man. If you were to ask me my opinion, which you have not, I would say they were both wrong. In other words, I would say that you could trust the average judgment of the average man on average questions, but so far as to leave it to a community to legislate or make laws by themselves, I never have, and I do not believe I ever will, believe in their capacity to do it. (Applause.) But it is a curious circumstance today that we are called to the extreme. In other words, all of the centralization which Hamilton contended for has arrived and is sweeping to centralization of government; and, curiously enough, it is being swept there by the popular Democracy for which Jefferson stood. To the vindication of the extremes of policies of those two distinguished statesmen, and to accentuate in a sort of dramatic way, the Senate voted an equal amount to erect a monument to Hamilton and Jefferson, without saying one word about what was the meaning of it.

Now, I am no believer in the New Nationalism as it has been termed; that is, I do not believe you can take this group of restraints and expand the thing until it is all washed out and means nothing. I believe as the corporation develops the National Government has got to control it, and I believe the only way for the National Government to do it is to have the power in a constitutional way to control it. You say that is not Democracy. All well and good, then I am not a Democrat to that extent. I do not believe you can conduct the great industrial development of this country in any other way. Take, for instance, the Standard Oil Company and the Tobacco Company. The best illustration in the world is that they started off as a group of keys, you may call it. They did not have a ring then. Each key was bound up in the ring of the other. They dissolved in a little while because they were in restraint of trade, and then they invented the device of the holding company, which was the key ring, and they ran the holding company through all the other companies, and each key unlocked some subsidiary concern, and all of them were held by the holding company, and finally the Supreme Court, in its last decision, has determined that because of the purpose which underlay it, and of the unreasonable character of it, the holding company had to be dissolved, and we have got the spectacle now of Stand-

ard Oil and the Tobacco Trust being dissolved. There are 1200 other holding companies in this country, each of which, so far as the actual violation of law is concerned, is guilty today, only they are not so great and they have not done so much harm. For twenty years this Sherman Anti-Trust law has been on the books. It was a kind of a blind stroke in the dark. Twenty years ago nobody quite knew just what they were driving at. They said they would announce that everything in restraint of trade was a monopoly. They did not think that restraint of trade was the restraint of competition. The restraint of trade as it was then used meant that where a man sold out to you and agreed he would not go into business any more, that was the restraint of trade, and, curiously enough, in the adoption of that act the restraint of competition was offered as a substitute for it and voted down and restraint of trade kept in the act. Now, I do not care how strong you make all these things against these concerns. Heaven knows nobody would offer a defense of the brutal acts of the Standard Oil Company and the Tobacco Trust, but what I say is this: Whatever we are to do as a Nation or as a State in dealing with the great commercial development of the country, if you will permit me to descend to the language of the street, let us understand what the rules of the game are. Let us not change the rules of the game in the middle of the game. That is fair to everybody. If this country is going to decide that all holding companies must be dissolved, let us decide that. The spectacle has been afforded of the legislative branch of the Government advocating their dissolution for the last twenty years. The Supreme Court of the United States ought not to have had this question thrust upon them. It was not a judicial responsibility, or it ought not to have been. The Supreme Court was called upon to decide not only whether the acts of these corporations were in violation of the law, but to decide what the economic policy of this country was going to be, and they did determine it in such a way that in all future time every question of economic development has got to be referred to them, unless the National Government is given proper constitutional authority. It ought to be changed. The judges of the courts were not intended to have to pass upon such questions of economic development.

In conclusion let me say, the economic and structural changes

are marked by this: We have come to have a collective empire, collectively owned. Our bonds are in England and Holland and Germany and France. The bonds of France, Germany, Holland and England are in our country. And I give you my word, if it goes on long enough, I believe more than all the agencies of peace, more than all the proclamations and appeals of society, that the ownership and the capacity for infinite distribution which come from stock ownership and bond ownership will be the final and the lasting security for peace between all the nations of the earth, because they will be bound indissolubly together in interest, and, after all, the interest of a human being naturally controls his conduct and may be finally depended upon to control it.

In our structural changes, just in conclusion, we have had up two things, the income tax and the direct election of Senators by the people. I gave up as I would give up some ideal that I had cherished for years, and I surrendered with great reluctance, but I surrendered upon my conviction that the Senators ought to be elected by the people. All my reading and judgment and traditions were on the other side. I had been taught to believe that Senators were ambassadors from sovereign States, sent to the Senate of the United States, to represent as ambassadors those sovereign States. It had been a kind of beautiful ideal with me. But I came to the conclusion, because of the assumption of Federal jurisdiction over vast interests, and the consequent interest of those concerns in the election of Senators, and the subsequent pollution of the sources of power by those people, that it was made necessary to dislodge it from the hands of corrupt, or corrupting and corruptible men, and lodge it in the bosom of the people, where it will be incorruptible in a general sense. And I yielded to the policy that the people of the States can elect their Senators by the direct vote of the people. I made no bones of my position about it. I make no bones about the suffering I went through when I gave up my ideals, because I hate to give up an ideal, because when an ideal is gone, it is gone forever. Then came along the income tax, to my mind one of the most scientific forms of taxation, and I believe that if the income tax is adopted it will destroy what, in my judgment, has been a vice of American government, and

that is the system of invidious indirect taxation, instead of direct taxation. (Applause.) And I believe it means the end of all the protective policies. I hope no Republican takes offense if I got this far on my own side, because I do not mean to be partisan about it, but I believe it means the final end of the system of taxing one section of the country in a sort of blind fashion in order that another may prosper and grow. So I surrendered to both these structural changes, and I believe that with those changes structural and with those economic we shall proceed to the final development of our country, which will be a destination beyond our poor weakness to observe, but happily within the province of God. I thank you. (Applause.)

TEXAS BAR ASSOCIATION

DINNER TENDERED BY CITIZENS OF WACO AND MCLENNAN COUNTY BAR
ASSOCIATION, AT HUACO CLUB, WACO, JULY 5, 1911.

MENU

		<i>Martini Cocktail</i>
CANAPE CAVIAR		
JELLIED CONSOMME		
QUEEN OLIVES	SALTED ALMONDS	SWEET GHERKINS
		<i>Haut Sauterne</i>
FILET MIGNON, WITH MUSHROOMS		
ROMAN PUNCH		
NABISCO WAFERS		<i>Sparkling Burgundy</i>
ROAST SPRING CHICKEN, WITH DRESSING		
MASHED POTATOES		FRENCH PEAS
ASPARAGUS TIPS VINAIGRETTE		<i>Mumms</i>
NEAPOLITAN ICE CREAM		ASSORTED CAKES
IMPORTED SWISS CHEESE	SARATOGA FLAKES	
CAFE NOIR		
PERFECTOS		

TOASTS

MR. ALLAN D. SANFORD

TOASTMASTER

MR. MARTIN W. LITTLETON

—OH! WHAT A DIFFERENCE IN NEW YORK

MR. C. L. JESTER

—KEEP COOL

MR. NEWT B. WILLIAMS

—LAW AND ITS TECHNICALITIES

DR. H. Y. BENEDICT

—LAWLESS REMARKS BY A LAYMAN

MR. JUSTICE DIBRELL

—FROM THE BAR TO THE BENCH

MR. JOHN L. DYER

—THE RETURN OF THE PRODIGAL SON

THE TOASTMASTER.

Gentlemen of the Texas Bar Association: The thirtieth annual meeting of this Association is about to draw to a close, and in the

closing scenes of this afternoon, as well as this morning and tonight, I am reminded somewhat of an incident which occurred a number of years ago in my native State, Tennessee. In 1892 the Populist party had attained considerable strength and prominence in that State. The real live question was, "How did the Populist party happen, anyhow?" One morning an old negro came up from the quarters and announced to his master that he had had a dream the night before, in which he had discovered how the Populist party happened to be. He said, "Massa John, I dreamed that when the Lord was making the people of this world, He made some white folks and black folks and red folks, and all other kinds of folks, out of clay, and He spit on them, and He set them up aside the fence to dry, and went off, and after awhile He came around and blowed brains in them, but while the Lord was gone off some of them folks wandered away, and them was the Populist party." (Laughter and applause.) In a sense—and only in a sense, I am reminded of the lawyer. When the Lord made the people of this world he made all kinds of folks. He made the doctor, and the business man, and the farmer, and every other kind of man, and He finally came to make the lawyer. He said, "Out of the composition of these men I will leave all envy and petty jealousy." Today in our convention we have had strife, almost—at least, contention. Tonight, seated around this festal board there is nothing else than brotherly love and genuine human fellowship. (Applause.)

Leaving that subject just for a moment, the greatest hero of the greatest historical novelist whom the world has produced, when he had escaped from the Castle d'If and had successfully braved the waves of the ocean and had mounted a rock in safety, exclaimed, "The world is mine!" We have with us tonight one who, though young in years, young in a measure in experience, may truthfully say, "The world of success is already mine." We have with us tonight a man whom we claim really as our own, though for awhile he has departed from us. We hope and trust that before long he will return to the land that gave him the real inspiration, in the broad expanse of prairie, to the heights to which he has attained. I present to you, gentlemen of this Association, Hon. Martin W. Littleton of New York City. (Applause.) He will now speak to us from the subject, "Oh! What a Difference in New York." (Laughter and applause.)

OH! WHAT A DIFFERENCE IN NEW YORK.

MR. MARTIN W. LITTLETON.

Mr. Toastmaster and Gentlemen of the Association: I had supposed that by this time perhaps the Association had grown somewhat tired of the things that I might say, or the things I had to say. It seemed to me like I said a great deal this afternoon. It seemed to me like people might well have grown tired of it by this time, and that I might have been permitted to have just enjoyed, without speech, or reference, or allusion, the convivial spirit and the splendid fraternity which seem to preside over and be a part of this delightful banquet. I can not say, however, that I am unhappy because I have been called on, chiefly because of the fact that I could not be as personal today as I might be tonight. The toastmaster, whom I have

addressed with some dignity, I know chiefly and particularly as Allan Sanford, and I have known him a great many years.

THE TOASTMASTER: Don't tell what you know, Martin.

MR. LITTLETON: He says for me not to tell what I know, and I shall not, simply because I am afraid he will tell what he knows. (Laughter.) If I were quite sure that I could keep him from doing that, I would tell all I know. I want to say one other thing tonight. I had it in mind to say today. I have a particular friend of a great many years' standing, who has, because of the sudden and more or less unexpected accession of myself to public place, become my colleague. I roomed with him in Dallas, when he was Assistant Attorney General, and his kindness and consideration to me, after his long service in Congress, and his loyalty to me as a friend, not only compel me, but give me great satisfaction, to speak of him tonight, when I am in his home. He is my good friend, Bob Henry, of whom I meant to speak today. (Applause.) When I went to Washington I knew some of the men there—some well—and I knew almost all of the Texas delegation, but among all the men I knew, I felt a natural gravitation toward and natural disposition to approach Bob Henry and talk to him as I had talked to him and known him years ago. I was not unrewarded in the feeling that even after the lapse of years and the knowledge of the fact that our paths had been separated, still I would find in him the same kind, genial, loyal and truthful friend that I had known many, many years ago. It was a great satisfaction to me to find him there, to know him and to receive from him the benefit of his long experience there, and it gives me great satisfaction here, in his own home, to testify to the already lasting friendship which was formed many years ago, and which has been ripened now. (Applause.) I know what politics does. I know how men differ and have their opponents and their supporters, but, gentlemen, I know of no way in which men can discharge their duty to their country and to their fellows better than to make acknowledgment of their friendships openly and publicly, wherever they go, and take their stand by their friends, and say, "He is my friend. It is enough for me." (Applause.)

The subject which has been assigned to me, which the toastmaster has very happily said that I am to speak from—which I suppose means that I must get as far away from it as I can and remain at a safe distance (laughter)—is, "Oh! What a Difference in New York." I shall not remain very far from the subject, or very long on the subject—long enough, however, to say that there is not such a mighty difference between New York and Texas. There is not such a great difference between the Bar of New York and the Bar of Texas. I say this here now not because I am in the comfortable seclusion of a country club, for I have said it in public places, where it could have been published if anybody cared to do it, that the standard of intelligence and character and ability of the Texas Bar is superior, in my judgment, to the standard of the New York Bar. (Applause.) I had occasion to say this to the New York State Bar Association at their banquet, and I do not, in consequence, find it difficult to repeat it here. (Laughter.) I do not mean by that to disparage the country which has been kind to me, and whose adoption I am grateful for, for that would be most unkind, and most ungrateful, and most unbecoming in me, but I mean to say what is true, that the specialization of work in the Bar of a great city has made men half men and quarter men, instead of making them whole men and strong men. We may

have our Choates, as we have in the example of that venerable leader of the American Bar, who, passing beyond the mark of eighty years, is still in appearance godlike and princely; in intellect wonderful, in inheritance superior, and in ability transcendent. We have him. He belongs to us. He belongs to all the Bar of this country. I had the satisfaction of hearing him say not long ago to me personally that he wondered how young fellows from the South ever got on in New York. He said: "I came to New York with a letter from Rufus Choate to William M. Evarts. I presented the letter to William M. Evarts and he said, 'Young man, hang up your hat in my office and stay here.'" He said, "That is the struggle I had in New York when I came from New England to New York, but when I find young men coming here from other places, with no forebear to prophesy their success, and no particular culture to testify to their promise, and no particular ability to give the promise of their final achievement, and no means, or money or friendship to buoy them up, I wonder how the boys get on. But," he says, "seemingly they do." We have that broad type of man, who would shine in any Bar, in any country, and everywhere. We sent him to England as ambassador and they made him a bencher of the Middle Temple, and they took him to themselves, because he was really, and is really, a very great, distinguished, acute, shrewd, commanding and magnetic lawyer. But I speak of one out of ten thousand lawyers, for there are ten thousand members of the Bar of the Greater City, and when I have spoken of him, and him multiplied by fifty, I have spoken of all the men who in the forum are suited to the task of the contest of the difficult lawsuits, to present to the court the thing which is in issue, and to keep away from the court the thing which is not in issue, and not trifle with the things which are immaterial and inconsequential. The balance are devoted to probate practice and corporation practice, and to an infinite variety of things in which there is a vast amount of money and income, but in which there are none of the things that we in this country know and understand to be; that is, the things which draw from the man in the pit the grit, the brain, the brawn, the genius, the courage and the brightness which makes him able to take his client's case and follow it to the ultimate result, and be assured all the time that he is in command. So when I said that the Texas Bar furnished, in my judgment, a higher standard of excellence and ability than did the standard of the Empire State, I repeated what I knew to be true, that they must of necessity adapt themselves to, and deal with, and finally manage and control, the entire inception, course and conclusion of litigation and business, whereas we specialize in New York.

The subject is, "Oh! What a Difference in New York." My friends, there is a difference, if you mean the social difference, if you mean what it is to start in New York and start in Texas. Then there is a vast difference, and the difference lies just here. I believe that New York City offers the finest opportunity for the genius and talent of young men of any city or country in the world, and will pay the most and give the largest reward, without exception. The difficulty of the whole thing is, how to find it. The man may press his face against the window pane, and the snow may whirl in tumult outside, and the job may wait for him inside, but if there be no intellectual medium by which the man can find the job, or, to put it in another way, by which the jobless man can get the manless job, he may as well never come close to it at all. The difficulty in the cities of the country is: How can the man know where he is needed, and how best

can he find the place, and having found it, how best can he suit himself to the task?

I came to Texas in 1881, from the State from which the toastmaster came, and I grew for sixteen years up in the Northwest Texas country. I was admitted to the Bar twenty years ago yesterday, before Judge Patterson, of the district in which I then lived. I found it easy to know the men in this country, and, if I may be just confidential and personal, and not be assumed to be referring to myself too much, the reason why I sought the city of New York was because I said to myself, "The ultimate of professional opportunity, the final sum of the whole thing, must be found in some place where you are not limited if you are going to make a fight." That was the reason that made me go there. I am not sure, if I could look back and know that I had to do all the things again that I have done, and suffer all the things again I have suffered, and see all the things I have seen, and worry about all the things I have worried about, and doubt all the things I have doubted, and hope all the things that have failed and been vain in hope, that I would have the nerve or the courage to do it all again. (Applause.) But, thank heaven, men do not have to go back and pack up their pasts and make them the sum and substance of their success, and say, "This is the bundle of the things I have done." Tennyson says, "I am a part of all I ever met and saw." We all are, and the part I met in the sixteen years in Texas, which was imparted to me, I count the brain and the brawn and the grit which gave me sufficient courage to find my way along and about and around the city, to which I am now confessedly—and if I did not make my confession plain I would be cowardly—deeply attached and devoted.

Let me say that the story of the coldness of the city is not true. It is absolutely wrong. I have never known more hospitable, more kindly, more genial, more helpful, more emotional friends than I have known in the city of New York. It is all a mistake. The world is just the same, and "a man is a man for a' that." He is a man any place you find him, and if he is not a man he will not be a man there, and he will not be a man anywhere, for he can not be a man. (Applause.) It is not in his soul to be. Politics is sometimes supposed to enter into it—race, breeding, section, locality. It is not so. It is not so in New York. It is least so in New York of any place I every knew. Why, in New York I ran for office not long ago, most unexpectedly, and I got elected, quite more unexpectedly. I was running in a Republican district. I went down in the town where Mr. Roosevelt lives, which is about eight miles below where I live, and spoke at Oyster Bay. Now, gentlemen, do not misunderstand me. I believe that Mr. Roosevelt represents a distinguished and gallant type of the American (applause), and I believe that he has rendered a great service to his country. (Applause.) I make this acknowledgment, I make this proclamation, not because I expect to be applauded, but because it is my duty to do so, and because I believe it, and since he is now my constituent I must at least take care of him for a time. (Applause and laughter.) I went down in his district, and I think in the audience there were four Republicans to one Democrat. The opera house was filled with people, and I was there seeking their suffrage, a kind of thing I never like to do, because I hate the idea of asking or trying to get a man to vote for you. It is kind of revolting to me, and I never got anywhere by doing it, and I do not suppose I ever will get very far with it. But that night I said, "I am reminded tonight, gentlemen, of the young Vermont Republican who wrote to an old Texas Democrat and said, 'I am a lawyer and Republican, and I would like to know if you think there is any chance for a Republican, who is an honest lawyer, in the State of Texas.' The old Democrat wrote

back and said, 'My dear sir: As an honest lawyer you will have absolutely no competition in the community. (Laughter.) As a Republican, you will be protected by the game laws of the State.'" (Laughter.) So I felt when I went down to Mr. Roosevelt's town that I could expect to be protected by the game laws, because he is quite a gallant hunter, and I submitted myself to the game laws when I arrived in his town.

My friends, others are to say some things. I only rise to make my acknowledgment of the fact that today, more than all days, has meant much more to me than it probably seemed to signify to you. I had long coveted the opportunity of being among the members of the Bar Association of the State. I need not say this to the younger men of my age, or even younger still, because the dreams they dream, and the hopes they have, and the things they think, we all know, because we have dreamed the same things, and we have hoped the same things, and we have thought the same things, but there is something about wishing to be a member of the Bar that is a kind of a pursuing thing, that drives and drives and drives him under the impetus of his ambition. I was told tonight by Mr. Saner that I had the good fortune to be made an honorary member of the Bar Association of the State. I now make my public acknowledgment that I consider it a great distinction and honor, and if I do not do more than this, I trust, at least, I shall never be a discredit to the Bar, or the Bar Association of Texas.

To my mind, and this is the only serious thought I wish to submit, the Bar must mean more than the specialization of industry, which the Bar of my city means. This has been essentially a government of lawyers. You need only to refer to De Tocqueville or to Macauley, or to any historian, to ascertain the fact that we, of all nations on the earth, have owed much to the genius and courage of lawyers—that of all nations that have owed much to the genius and courage of lawyers this nation owes the most. You have now only to go to the councils of our Legislatures and our Congresses to find that the lawyers predominate. It has been complained of by farmers and by merchants. It has been written about more or less cynically by newspapers, but nevertheless the fact is that what we have achieved has been achieved by reason of the fact that men trained in the profession of the law and the understanding of government, and in those correlated and related subjects, have served in the public service. Therefore, gentlemen, the responsibility of lawyers is very much greater than they suppose, and I hope I may leave this as a lasting thought: You not only owe it to yourself to find your station at the Bar, to command, to be in control, to be able to challenge your adversary, to win, to earn, to achieve, to gather together the rewards and compensation of your service, but you owe more than that. You found this a good country to live in when you came here. You ought to leave it a better country to live in when you go away. (Applause.) Every man owes to the community in which he lives the best of his thought, the best of his impulse and the best of his courage, and whenever those thoughts, and whenever that courage, and whenever those impulses lead, it is best for him and best for his community, to make those things the leading things by which he is guided. What we need now more than all else is not physical courage, not even moral courage, but what we need now is intellectual courage—the courage of the brain that thinks, the courage of your conclusions, the courage to say: "Upon this thing I have thought. Upon this thing I have felt. Upon this thing I have concluded, and I owe this conclusion to the community in which I live, and I submit it without fear, because no man has a right to challenge me if I have given him the benefit of my convictions upon any public subject." (Applause.) If it shall come to us to serve, if

by this we come to lead our community; or, if I can put it in plainer and even more vulgar speech, if from the ranks of the lawyers and of public men you can drive the demagogue, the man who lies to his community and to his country, who would have been a courtier in the days of tyrants, flattering the monarch, and who is today, in the days of the democracy, a courtier flattering the majority, equally reprehensible in his influence; and if we can put in the place of him the man who says, "I love my country; I am not afraid to serve my country, and I am still unafraid of my neighbors if my conviction leads me to some conclusion." "Let us take from the statue of Ben Hill the beautiful thought: "Who saves his country saves all things, and all things saved bless him. Who kills his country lets all things die, and all things dying curse him." I thank you. (Applause.)

THE TOASTMASTER.

As has just been said by the gentleman to my right, the charm of the personality of the speaker holds us as long as he is with us. Gentlemen, when I entered the law department of the University of the State of Texas, I met a young man just about my age, perhaps a little younger, who had aspirations like I did. Shortly before entering the University, and for some year or more previous to that, a long ways from home, in Texas, I had been working for wages. I deemed it necessary for me, in entering the principal institution of learning in the State, to acquire, among other things, a full dress suit. Consequently, I spent all my saved-up earnings in buying that full dress suit. After arriving at the University, and being largely dependent upon what I had earned previously, I learned that I had made a mistake, and I cast about to find somebody to buy that full dress suit. (Laughter.) I found a young man who was more fortunate than I, in some respects, at least; whose people lived in the State, and who had more of this world's goods at present command than I had, and I said, "Jester, (laughter), I would like to sell you this full dress suit. It is tailor made, up-to-date, the proper length as to coat tails, and the right size as to trouser legs. (Laughter.) I will sell it for half price, provided you will agree that we let it be 'norated' around that you are the owner of the suit, and I am to have the privilege of wearing it occasionally." (Laughter.) He said, "Sanford, you are taken." So I sold Jester the full dress suit. Thenceforth during that term I would step around to Jester—we lived in the same boarding house—and I would say, "Lee, are you going to such and such a party tonight?" "No." "Well, then, lend me the suit." And throughout that term, gentlemen, we handled that suit between us, first one wearing it and then the other. Lee tells me that he is exceedingly sorry to announce that some three years ago he took that full dress suit to a second hand clothing dealer in Corsicana and disposed of it for \$2.50. (Applause and laughter.) I would not have done it. But, seriously, gentlemen, the history of Mexico records that when Cortez, in the midst of his conquest, had reached a point where he lost all hope for the future, there was a man who came to Cortez named Navarro. General Navarro bridged over the difficulties for Cortez. There is with us tonight a man from Navarro county, who, if you are ever in difficulties will come to your rescue if you call upon him. True to his family history, he is a Jester only in name. I present to you Hon. C. L. Jester of Corsicana (applause), and he will speak to you tonight upon a very hard subject, "Keep Cool."

"KEEP COOL."

MR. C. L. JESTER.

Mr. Toastmaster and Gentlemen of the Bar Association: When, out of the goodness and preference of my friend, the Toastmaster, I was invited, in substitution of another, to appear upon the program tonight, I asked him what I was to talk about and he replied, "About ten minutes." (Laughter.) When I pushed my inquiries further and asked him what subject I was to talk upon, he looked upon me with much of pity, as if he thought I had degenerated since our school days, and said, "Young man, you must not talk on anything. Talk from something." And I now serve notice upon you and him that I am going to claim all of the rights, privileges, prerogatives and franchises granted and given to me under that very liberal concession.

A word of appreciation for the splendid hospitality, and the ease and grace with which it has been proffered by the Bar and citizens of this beautiful city, before I launch into a discussion of the very serious subject which has been assigned to me. After enjoying all these things to the utmost I am made to realize how important it is that we should have come here. And, in this connection, I am reminded so impressively, that I can not resist making the application, of an incident concerning a goodly lady who was anxious that her children, consisting of fifteen, should go to the circus and see the rhinoceros, which was that day being shown in town. She placed herself at the head of the family procession, arranging them according to seniority, caused each to join hands, and bidding them follow her leadership, appeared at the ticket window and called for sixteen tickets; the man at the window asked her for the second time how many tickets she had called for, thinking he might have misunderstood her, and she repeated her order for sixteen tickets. The ticket man then asked her why she wanted so many tickets, and she replied that she wanted her children to see the rhinoceros. He threw up his hands in astonishment and asked her if all those children were hers, and with becoming motherly pride, she replied in the affirmative. Whereupon he said to her, "Madam, walk right in and take all the children, it shan't cost you a cent; it's a whole lot more important that my rhinoceros should see your family than that your family should see my rhinoceros." (Laughter.) And this reminds me to say, apropos of the excellent treatment which we have received here, that it is a whole lot more important that the lawyers of Texas should be privileged to visit and see Waco and accept its splendid hospitality than that Waco should see us. (Laughter.) Concerning the overlarge family of the good woman of rhinoceros fame, it may be pertinent just here to offer the same explanation as did the half-witted boy in her neighborhood, when called on to account for her numerous progeny, by an erstwhile resident of the town, when he said, "She had three to oncet, two to twicet, and one a good many times." (Laughter.)

I hope that I am as familiar with my subject (and I suspect I am—just about) as a couple of members of the bar appeared to have been with the subject they were discussing on the way out here this evening. It seems that the proposed amendment to the Constitution was not being neglected in this discussion and one of them made some reference to the Bible, with which he claimed great familiarity, as sustaining his position. The other hooted at his temerity at even presuming to mention such a book, much less claiming familiarity with it. "Why," he said, "you don't know anything about the Bible. I began hearing it read at my mother's knees away back yonder in the breezy hours of my young childhood." "Why," said the other,

"I'll bet you ten dollars you can't repeat the Lord's Prayer." It was a bet and the money was put up. The Biblical scholar was asked to proceed to win or lose his bet, and he responded in this wise:

"Now I lay me down to sleep,
I pray the Lord my soul to keep.
If I should die before I wake,
I pray the Lord my soul to take."

With a nod of satisfaction, and yet of disappointment, the supposed loser said to the stakeholder, "Give the durn'd fool the money; he knows more about the Bible than I thought he did." (Laughter.)

The question which has been assigned to me for discussion, as you will agree, is one of very broad import and it is an especially appropriate subject for discussion, both climatically and politically, in Texas at this particular season. It might be observed of this subject, "Keep Cool," that it is different from all other undertakings in that the more energetic one is in his efforts to accomplish it, the less successful he will find himself to be in the end. It is a question of the greatest importance to every living lawyer, and some ill-advised inhumans contend that it is the all absorbing question to those lawyers who are dead. (Laughter.) If there is any class of men to whom this admonition, "Keep Cool," more strongly appeals than to another, it is the class to which we belong—the lawyers; his trials are many—or few, his vicissitudes without number; he has more to prick his pride and more to test his patience than any living soul, and if he would survive it all he must keep cool. Especially is it of value to the young lawyer, for if a ferocious old senior, of five and twenty years' practice at the Bar, takes a sprightly young junior by the nape of the neck and holds him up to the gaze of a much amused jury, he had best keep cool, unless, by losing his head, he might, in the classical language of the colored orator, "Transcend the compound." Or if the court should sustain a general demurrer or a special exception to what he thought, during its preparation, was an invulnerable masterpiece, don't cuss the court, my brother, for an unlearned old fogey, but keep cool and you will be in a better condition to prepare for your trial amendment.

Even if six hundred thousand homes are about to put out of business four thousand saloons, or even if four thousand saloons and four million people are to suffer annihilation of liberties and property, because of the fanatical craze of well meaning but misguided zealots; or even if a well meaning and wise people should vote her wet or vote her dry, my brother, keep cool, for no man ever appears at his best or for his full worth in the heat of excitement. "See'th thou a man that is hasty in his words, there is more hope of a fool than of him." You will find this authority reported in Proverbs xxix:20, (laughter), and I commend it for your consideration. (Laughter.) The result of the study which I have given the older members of the profession shows, without hardly an exception, that the cool headed, conservative ones, who meet, with the same mental temperature, the glory of victory and the despair of defeat, are the successful ones in the end.

As we glance backward down the years which have gone to make up the history and the jurisprudence of this blessed commonwealth of ours, as we discern through it all its wise and wholesome laws, made and administered for the protection of its inhabitants; its splendid judiciary, whose published adjudications, whose written charges and whose upright conduct and stainless lives have reflected naught less than honor and character and courage and brains; when we realize the extent of its progress and its growth and the firm

foundation upon which it is laid—I say when all these things come back to us, after calm reflection, when the fire and smoke of the battle are gone and when our better natures take hold of us, then it is, my brothers, we must admit, that the cool headed, conservative patriots have builded wisely and well in Texas, and we are today in our manifold blessings reaping the rich fruition of the devoted services and conservative policies and performances of such men as Houston, Reagan, Coke, Hogg, Stayton, Roberts, Gaines and a host of others, whose names are lastingly imprinted upon the pages of our country's history.

Macaulay tells it of Lord Halifax of England, who in his day was dubbed "The Conservative," that instead of quarreling with his nicknames he assumed it as a title of honor and vindicated, with great vivacity, the dignity of the appellation. "Everything good," he said, "trims between extremes. The Temperate Zone trims between the climate in which men are roasted and the climate in which they are frozen. Virtue is nothing but a just temper between propensities, any one of which, if indulged in to excess, becomes a vice."

It is said, and beautifully, too, that when the natives of a certain country in Eastern Europe erected and dedicated to the memory of their lost king and chieftain a monument, they inscribed upon that monument an epitath, which runs, I believe, about in these words: "It is not, O King, this monument that makes you great, but it is you, our King, who makes this monument great."

Mr. Toastmaster and brethren, I am reminded to say, in conclusion, that it is not this country that makes her citizens great, but it is her cool headed, conservative citizens, who, as my brother (Mr. Littleton) has said, know the right and dare to do it that makes this country great. I thank you. (Applause.)

THE TOASTMASTER.

There are several essential elements in the ideal legislator. Principal among these are mental capacity and the moral courage to stand for legislation which he himself believes to be for the best interests of all the people, and to oppose legislation which he believes will not meet this end, regardless of the effect upon his own political fortunes. McLennan county has been peculiarly blessed in the character of her legislators. But never in her history has she had a representative in either branch of the legislature who measured up more nearly to the full stature of the idea than does Newt Williams. (Applause.) I am at a loss to understand fully what Mr. Williams is going to do with the subject assigned to him tonight, but I am inclined to believe that there are some newspapers in this State, as well as some gentlemen who have spoken in public in the last few weeks, who will be literally flayed alive. It is with very great pleasure that I present Mr. Williams to you. (Applause.)

"LAW AND ITS TECHNICALITIES."

MR. NEWT B. WILLIAMS.

Gentlemen of the Association: I am not unmindful of the honor conferred upon me by your toastmaster this evening, but when I think of the importance of the subject assigned me, I can but wish, like one of old, that this cup might pass from me.

The subject assigned me is one that calls for the most serious consideration of the Bar of Texas, rather than light, entertaining remarks. It has been the subject of discussion by candidates for both high and

low offices in this State, and laymen have been led to believe that the law's technicalities were being used as a loophole for its non-enforcement. Such, in my opinion, is not the case. What is commonly termed the technicalities of the law is just as available to the plaintiff as defendant, and by the exercise of the same intelligence, can be used to expedite as well as delay, to enforce as well as avoid, the law's demands.

Law necessarily is a technical science, based on certain rules of procedure, that must be conformed to in all cases alike. The primary definition of law is "A rule of procedure by which the legal rights of litigants are determined." Like all other sciences that have attained any prominence in the civilized world, due regard must be given to its rules and the intelligent application of its principles to the varied subjects in controversy.

You can not speak the English language correctly without the application of technical rules of grammar and rhetoric; you could not construct the great highways of this country, without a technical knowledge of civil engineering, or momentum and gravity; nor could you build the giant structures that tower like yonder building heavenward, without due regard to the technical laws of gravity, of tensile strength, hydraulics and electricity. It seems to me idle criticism for people inexperienced in the science of law to openly and boldly criticize its technicalities; they simply lay themselves bare to successful criticism and parade their ignorance of the law they criticize.

I believe that our laws should be written as plain as the English language can frame them, and then technically enforced without regard to who is benefited, or who is injured, by their enforcement.

Nine times out of ten when you hear severe criticism of the law and its technicalities, it comes from some fellow who has had its plain letter and spirit revealed to him for the first time. Ofttimes it comes from a vaccinated lawyer in explaining to his client why he had lost the case, thus unloading his own shortcomings on the courts and the technicalities of the law. In this way there has been, to a certain extent, builded up the impression among the people that lawyers are tricksters and the law a labyrinth of non-sensical technicalities. There is no ground upon which such criticism can be justly based. It is not the lawyer who knows the law and its defects that claims that it is teeming with technicalities, but it is those who are least conversant with its fundamental principles who complain so bitterly of its many great vices. The legal profession like all others have its black sheep, but the lawyers know them as well as the shepherd knows them in his flock, and sharp practice is as readily censured by our courts and our profession as any other.

It is easy, indeed, for laymen and members of other professions to wisely criticize and give advice, but generally that advice is a delusion and a snare, which when critically examined is untenable and worthless. Much of the most caustic criticism of our higher courts springs from unwise or over-zealous district attorneys, ignorantly or intentionally, leading the lower courts into error and thereby obtaining advantage not allowed by law, and then when the case is reversed, he criticizes the technicalities of the law and the higher court, when the fault is all his own. He should have assisted the none too learned lower court in keeping the record clear. You may say that I should not be too severe upon these wise and sage-like critics, and perhaps you are right, for in my opinion they are "only poor weak mortals after all, like apple-eating Adam, prone to fall."

Much of the criticism of our higher courts finds its birth in the brain and conduct of the lower courts who have allowed themselves, unwittingly or knowingly, to become biased in favor of or prejudiced

against, one of the parties litigant, and then when the case comes back reversed on account of sins of omission and of commission, perpetrated by the lower court against the spirit and letter of the law, the court and those responsible for its conduct seek refuge by shifting the responsibility from themselves to the law and its technicalities as administered by the higher courts. The trouble is that they have spent more of their time fixing up their political fences and playing to the passions and prejudice of the public in order to hold their jobs, than they have spent in the quiet study and preparation of their case. They allow themselves in many instances to be influenced by public feeling and sentiment in the trial of cases, rather than follow the plain letter of the law.

In this connection I can but refer to that most wonderful grand jury report from Dallas in criticism of our laws and our higher courts. Individually I know nothing of the spirit that led to that criticism, but I would wager that I can point to the Parisian hand that dictated or caused that report to be written, and it would not be a member of the grand jury either. Any lawyer who will read that document can but wonder at the ignorance of the law there displayed. The criticism is absolutely without foundation in law or fact, and the main principle that they advocated, with reference to the choosing of the juries, is the law of the land today and has been for years and years.

In this connection let me further say that the very report of the grand jury and its widespread publication makes it almost impossible for the intelligent reading public to sit as fair men in the trial of cases indicted by that grand jury. It is a political document in part, and in part it seeks to pave the way for an unfair fight in the court upon the bills found. I expect most of us know what reversals are especially referred to in this criticism of the higher courts, and they choose to place that upon the technicalities of the law when those cases that they had in mind were reversed on the statutory, the common and the constitutional laws of the State. This is purely another play to the galleries and feeling and prejudice instead of a fair criticism of our higher courts and the law's technicalities. If critics would spend more time in research and study and less time in feeling the public pulse and pandering to sentiment, the reversals would not be so numerous.

The laws of Texas are recognized throughout this Union as being the simplest, yet the most comprehensive, the plainest, and the most effective of any State. There are instances, of course, where the laws might be simplified, but those instances are not near so numerous or glaring as the critics would lead you to believe.

It would not do. It would be a sad day for Texas to place absolutely in the power of the higher courts the right to say that no injury had been done a litigant but that justice had been done, notwithstanding he had been deprived of his constitutional, statutory and common law rights in the presentation of his case in the lower court. That would be an appeal to the conscience of the higher courts instead of an appeal to a tribunal of judges, acting upon the established law of the land. The personnel of the higher courts is constantly changing, therefore their conception of right and wrong and justice is constantly changing, and the life, liberty and property of litigants should not be left to the changing consciences of the higher courts instead of the established law of the land. One of the most profound students, lawyer and jurist, that ever graced the appellate bench in Texas, who made the criminal laws of Texas recognized throughout this Union as the highest authority—the lamented Hurt—was technical almost to extreme, and de-

manded the strictest compliance with the laws of our State as they were written. This being the case, it is strange to me that all of the States in this Union should cite with approval our criminal laws if they are as vicious as has been charged.

You will notice that the great majority of those who rant and rave about the law's technicalities and the courts, are vaccinated lawyers and laymen, and those least capable of intelligently criticizing. Why is it so? The reason is a desire to place all lawyers on an equal footing. A desire to fix the law so as to take care of their own ignorance. A desire to place the profound student and lawyer on the same footing before the court with the indolent, the lazy and the stupid. You can't do this. Brains will count wherever you find them in every profession and in every calling.

I would like to discuss some of the numerous technicalities of the law, but I have already transgressed upon your time and I submit my case to your consideration, and the grand jury of Dallas.

THE TOASTMASTER.

Gentlemen: When you have listened to the next number upon the program, I am sure you will exclaim with Richard the Third, in a sense at least, "And now is the winter of our discontent made glorious summer by this son of the laity, and all the clouds of dissatisfaction that lowered upon our house, in the deep bosom of the ocean of forgetfulness are buried. Grim-visaged war has smoothed his wrinkled front, and no longer mans the parapet to try the souls of us, his listeners, but capers nimbly in a lady's chamber, to the lascivious pleasing of a lute." (Laughter and applause.) Gentlemen, it is with great pleasure that I present to you Dr. H. Y. Benedict, loved by all who know him, beloved especially by the members of the University of the State of Texas, of which he is an honored member. (Applause.) His subject begins with the word "Lawless." Look at him. (Laughter.)

"LAWLESS REMARKS BY A LAYMAN."

DR. H. Y. BENEDICT.

Gentlemen of the Texas Bar Association: When I recall the fact that your toastmaster, Alian Sanford, knew me well in olden times, I rejoice that he called me a son of the laity rather than a son of a gun. (Laughter.) Owing to the hour, I must begin by bidding you good morning and asking if you have used Bar's Soap. (Laughter.) It is a great pleasure for one of the laity to be here, but it is darn lonesome. (Laughter.) Great is the pleasure of finding oneself in the hospitable city of Waco, which, since the completion of the Amicable Building, resembles a great thumb tack standing on its head. All my life, for some reason or another, I have delighted in the company of lawyers. I have sometimes suspected myself of being fond of bad company. (Laughter.) Some there are, however, who say that lawyers are not careful in choosing their associates. (Laughter.) On the other hand, in this professional character I have avoided the lawyer as I would the devil. (Laughter and applause.) To be forced to employ a lawyer would cause my very appendix to curl with terror and my bank account to vanish away utterly (laughter), provided, of course, there was one to vanish.

It is, of course, a great honor to be permitted to address you—somehow, I seem to have heard just such a statement many times tonight

(laughter), and therefore I will vary it. Great, great is the honor (laughter); great, great is the consequent embarrassment. (Laughter.) How can an humble specimen of the plain people (laughter), an unworthy representative of the University of Texas, an obscure dweller in chalky schoolrooms, appear to advantage in a gorgeous post-prandial exhibit of this kind (laughter) where shine with dazzling splendor the most resplendent orators of the legal profession? (Laughter.) Why do you laugh derisively? Arn't these specimens the best that you can furnish? (Laughter.) How, I repeat, can I appear to advantage in the midst of such "tamers of the wild denizens of the dictionary and thesaurus, such masters of the novitious noun and the vorticular verb," among whom is our distinguished visitor from New York, the conqueror of Oyster Bay. (Laughter.)

I appear before you as a representative of the plain people and the University, each essential to the welfare of this immortal Association. (Laughter.) The poor and the lawyer we shall always have with us (laughter), one in consequence of the other. (Laughter.) The plain people sadly furnish you with liberal incomes, the University cheerfully furnishes new recruits to your ranks. The University, I blush to say, is responsible for a very large percentage of this distinguished gathering (laughter), and I can only say on the part of the faculty, officially, that in future we intend to turn out far better lawyers than we have turned out in the past. (Laughter.) We will make amends—and amends are needed—for allowing to escape such carnivorous animals as Sanford and Saner, and a whole bunch of them here that I am ashamed to name. (Laughter.) When they were in the University you could begin to study law there without knowing how to read. (Laughter.) Now you have to pass a few courses over in the College of Arts. (Laughter.) Do not embarrass me with applause in the future, it makes me nervous. (Laughter.) The University is going to do better and turn out some real lawyers rather than pinchbeck imitations. The future of the legal profession in Texas depends in large measure upon the University, and, of course, you think the future of the people of Texas depends on the legal profession. It does in large part, but not as much as you think. (Laughter.) Now, far be it from me to come here a stranger, an eater of humble pie at your generous and thirsty board, and say anything derogatory to the legal profession. Far be it from me to say anything except of the most highly laudatory character. Burges and Yancey Lewis have promised to protect me in case I allow to escape my real opinion of the legal profession, but I have no confidence in their (Mr. Stribling: Integrity.) (Laughter.) That is not what I was going to say, though that is what I might have said. I have no confidence in their physical prowess. (Laughter.) Burges is not big enough and Yancey Lewis is out of training, and there is no white man's hope in either of them.

When I gaze at a law library and consider the steady stream of court reports, I am filled with hopeless envy when I think how large law libraries will be in the year 3000. (Laughter.) I will leave it for others to say despicable things about the legal profession, to accuse you of red tape, of musty precedents, of over-refined technicalities, of ways archaic, of riding the mule of progress with your faces towards his tail. (Laughter.) Some say that you are applying medieval remedies to modern conditions and are fighting the battle of the Twentieth century with the popguns of antiquity. Some are so uncharitable as to say that rapid transit is a thing wholly unknown to the law, and that a case must be begun in youth lest death intervene before its conclusion. Censorious persons say that you play the game of law ac-

cording to frightfully complex rules with clients for pieces, caring as little for the aforesaid clients as cares the gambler for discarded two-spots. Severe moralists say that your ethical code shows signs of wearing out at the heel, that you regard the courtroom not as a place of speedy justice but as an arena for the exercise of forensic skill. Perhaps this is true, I don't know. Some of you are even accused of preferring to go to hell according to law to going to heaven in some extra-legal way. (Laughter.) You can take your own choice, of course. You are accused of being foolishly enamored of precedents of doubtful validity and of preventing such trash from falling into the historical waste basket. Today one of your number was heard to say that you had so advanced that even a poor school teacher could afford to commit murder if he wanted to, so inexpensive are now the methods for securing verdicts of "not guilty." (Laughter.) Don't understand me to be making these criticisms. Remember, that I lack confidence in the muscle of my supporters.

Doubtless much of this criticism is ignorant and mistaken. Much of it, however, comes from the profession itself. Even the layman is entitled to be heard. He may know nothing of the law, yet he may observe the results of legal activity. He can tell whether justice is secured cheaply and speedily, whether rogues are punished and good men protected. The distinguished gentleman who has just spoken has denied to the layman any voice in the matter. But I maintain that the skinned eel has a right to squirm, and that one need not know how to cook before complaining of bad biscuits. (Laughter.) We laymen can certainly compare the results of American and English administrations of the law and wonder why in thunder cases are disposed of eight times as fast in England as in America, why decisions are secured in England and mistrials in America. (Laughter.) By your fruits can we judge you.

Now, the layman is helpless when it comes to reforming these matters. I listened today to a lot of learned debaters, and I tried to learn something, but I failed. (Laughter.) I hoped to see the law reformed, but no reform could I see. I heard lawyers say hard things about the law and I believed them because I admired their learning and truthfulness. I have long noticed that the legal profession admires itself greatly (laughter), and there is no reason why I shouldn't admire it and believe it when it says the law is perfect, or, if not perfect, its imperfections are irremediable and will get worse as time goes on. The layman can't know the ins and outs of the mandamus and the meum and tuum and the quid pro quo, and certainly can't expect many lawyers to work or write pro bono publico. Today, as Littleton says, has vanished another iridescent dream of my youth. (Laughter.) But it is the duty of a lawyer to simplify litigation even if he can not prevent suits, just as it is the duty of a physician to prevent disease. It is the duty of workers in most of the noble professions so to manage things as to reduce the need of the professions to a minimum. A doctor ought to prevent disease even if he loses fees, and an engineer ought to build a bridge so that it will not fall down, even if he gets no other bridge to build.

In spite of the impertinence involved in a layman offering an opinion on a matter of legal detail, I can not refrain from saying that our American judges should be given or should exercise more power. They should rule the contending lawyers and every one in their courts much more strictly than they do. Few of them would betray their trust, affairs would go forward more expeditiously, justice would increase. Any cause of mine I am more willing to trust to the average

judge, even to Judge Ramsey and Judge Key, than to an average jury of my peers, particularly as the word peer is interpreted in these days. Like an English liberal, I don't like this peer business anyway. I don't like these juries that you get up. (A Voice: "Of your peers?") (Laughter.) Yes, of my peers. I see that at least one of the legal profession can catch a point. (Laughter.)

Our judges I am willing to trust, even though all previous decisions were in the deep, dark bosom of the ocean buried. Precedents are of some help, but they often impede. Fortunately in most of the important decisions the element that is of importance is the judge's opinion of what is just and wise rather than his knowledge of the law. And his education in sociology, economics, etc., determine what he thinks just and wise. Progress comes from these personal views of the judges which they try to hide behind legal precedent. In a thousand years there will be new precedents, new laws, new constitutions and even new judges; the chances are that the new will also be the better. Constitution, laws, decisions are mere bench marks that in part measure the rising tide of civilization.

Let me add one word concerning the education of the young lawyer. Dean Townes has gone, so I speak with freedom. (Laughter.) The State should not train young men for professional life unless the young men are later to be of general social service. A State University, first of all, must turn out good citizens, prepared and resolved to be a good influence in the body politic. It is therefore only a part of the duty of the law department of the University of Texas to turn out men capable of earning their daily bread in the daily practice of the law. The larger duty of the department is to train men who, knowing what the law is, know also what the law ought to be, and are resolved to leave the law better than they found it. Like the physician seeking new ways to combat disease, the lawyer should be eternally seeking new ways to make himself useful to his country in the multifarious ways made possible by his training. This progressive and public side of the career of the lawyer demands much knowledge, and so I would that our law students be trained in economics and government, sociology and history and anthropology, grounding themselves not only in the law but also in the fundamental sciences that underlie it. Some of you smile at the mention of anthropology. I notice a great ignorance of anthropology on the part of lawyers. (Laughter.) This training in fundamental sciences is particularly important because of the number of lawyers who drop into politics and become public men. Better trained public men is one of the pressing needs of the United States today. Some knowledge of the practice of law our fledgling graduates must have, but what matters it if they have to learn many of the details of daily practice after graduation? The young lawyer will be forced to take up such a deficiency, but if he does not learn the basic sciences that underlie his profession while he is a student, he is not likely ever to learn these sciences afterwards.

But I have talked too long and must stop. (Voices: "Go on.") How can I go on, when my tongue has exhausted my brain? (Laughter.)

I was just getting ready to unload a fine peroration (laughter) when those "go-on-ers" down there made me forget it. Thus perishes a peroration far superior to that we heard this afternoon, for Martin

Littleton put so many words into his that his meaning quite escaped me. (Laughter.)

An end to me! May the law department continue to furnish you—did I say continue—may the law department begin to furnish you with capable lawyers. (Laughter.) May our young law graduates be able to profit by your sublime society, and may the entire legal profession go on to meet the difficult problems of the future in the same progressive way that the problems of the past were met by the great lawyers and statesmen whom you revere and pretend to emulate. (Laughter and applause.)

THE TOASTMASTER.

Gentlemen: To us lawyers that surely was a "ransom" piece of literature. (Laughter.) It reminds me of that old joke I heard in 1892 in Tennessee, in the political campaign in that State. An old negro walked into a crossroads grocery store in the country one day, and he saw some little boxes of axle grease setting up on the counter, the first he had ever seen. They were round and looked mightily like little cheese boxes. He said to the store keeper, "Boss, what is them in them little boxes?" The store keeper says, "Ephraim, them is cheeses." The darky says, "Well, what is they worth?" The store keeper says, "Ten cents, with some crackers." The negro says, "Give me one." He bought one and went out and sat down on a log in front of the store, and the storekeeper watched him a little bit. It was that old fashioned axle grease, you know. (Laughter.) In the course of an hour the negro came back in the store, sort of grinning, and the storekeeper says, "Well, Ephraim, how did you like them cheese?" He says, "Well, boss, them crackers was mighty good, but them was the ransomest cheeses ever I eat." (Laughter.) That was the ransomest speech that any lawyer in this crowd ever heard. (Laughter.)

Gentlemen, we are exceedingly sorry that Judge Dibrell found it necessary to leave us before this evening. He has been here with us for two days, and we have all enjoyed meeting him, and it was with great regret that we learned just about dark this afternoon that he had to go south today on the Katy to attend to some business, else he would have been here tonight to respond to the toast, "From the Bar to the Bench." However, we have a very worthy substitute. Judge Ramsey has recently—I started to say, been promoted from the Bar to the Bench, but after that speech I don't know whether to say that or not. (Laughter.) At any rate, he today occupies a position upon the highest bench in the State. All of us who have lived in Central Texas have known Judge Ramsey for many years. We respect him and admire him for his learning and his integrity. We love him for his traits of personal character. It is with great pleasure that I present to you Judge W. F. Ramsey. (Applause.)

"FROM THE BAR TO THE BENCH."

MR. JUSTICE RAMSEY.

Mr. Toastmaster and Gentlemen: It was a matter of very sincere regret to Judge Dibrell that the inexorable demands of business required him to leave without appearing before you tonight. Having quite a large acquaintance with the bar in this section of the State, I had myself hoped that you would all have an opportunity of hearing him. I think all of you must have noticed that he was a man of extreme modesty and as little self-assertive as any successful man well

could be, and yet he is a speaker of rare charm, and one whom I am sure you would have heard with great pleasure. But he said to me that the matter in hand involved business in which he might not only lose a very considerable sum, but involved obligations to other parties of a nature that he could not ignore.

I had not myself expected to speak until just a few minutes ago. Indeed, I would very much have preferred, if I could have ordered events, not to have appeared before you in the role of speaker at all, but I felt like I ought to give you, perhaps in more detail than our toastmaster could, the reason of Judge Dibrell's absence on this occasion.

I have, as stated, been both transferred and promoted within recent years, from the Bar to the Bench. I served an apprenticeship at the Bar, as a practicing lawyer in a country town for something more than thirty years, and I think I could have fulfilled one of the conditions of our friend from New York, in the sense that I was not a specialist. I took all that came, and was glad to get it. (Applause.) With thirty years' experience I should have been prepared, if indeed I ever could be prepared, somewhat for the duties of the Bench. I knew the lawyer's point of view, very well indeed, from long experience and many hard knocks, and so long was my service at the Bar that I have not forgotten that point of view yet. As I had occasion to say but a little while ago, I never had in all my life but two ambitions in respect to public office. One was that I might some day, in the fulness of my powers, be thought worthy to occupy a place on the Supreme Court of this State, and the other was that in that high position I might so bear and demean myself that I would be thought not unworthy to fill the high position to which I had been called. I occupy, and I mention it for a purpose that will be seen in a moment, a position that no other man has ever occupied in this State. Through the grace and generosity of my friend, the present ex-Governor of Texas, I am the only man who ever occupied a position both on the Court of Criminal Appeals of this State and on our Supreme Court. The three years' service that I had on the Court of Criminal Appeals was a revelation to me. I had come in a certain sense to believe, with many lawyers who did little or no criminal practice, that there was no such thing as law, or, at least, but little law, in the criminal branch of our jurisprudence. When I came on the Court of Criminal Appeals I was soon disabused of that impression and soon saw my error. Judged by its jurisdiction, judged by its effects on society and the preservation of the real rights of the different communities of Texas, judged by its influence on the citizenship of this great State, holding in its hands the issues of life and death, the repository in the main of the law as it pertains to the glorious writ of habeas corpus, it is indeed a great tribunal. I must acknowledge my obligation to the Bar and the people of Texas in the support that I received from them, and in their recognition. I think not confined to a few, that conscious as I was of many errors, that in that service of three years there was never a dishonest thought, and that I wrought in a spirit of justness, with a disposition to oppress no man, but to deal out the law with inflexible fidelity to all men. (Applause.) When I came to be transferred to the Supreme Court I had almost come to regret that the ambition of my lifetime was finally to be fulfilled. I do not know how generally I have been commended. I may have occasion in 1912 to seek an opportunity to ascertain. But I had some rich and rare and racy experiences in the way of letters of congratulation, and they are somewhat germane to the subject, "From the Bar to the Bench." Among the earliest letters I received

after my appointment was announced in the papers was one from my good friend, who but a year ago graced this Association as its president, the gentleman from El Paso. I had had but a very slight acquaintance with him, but I was charmed with him, and I think maybe we struck up a kind of mutual admiration society. He wrote me saying that on the Wednesday before my appointment, he had said to a number of gentlemen in San Antonio that in the event of Judge Gaines' resignation he should like to be Governor of Texas for one hour, to appoint that great and grand man, Thomas Jefferson Brown, Chief Justice of Texas, and your humble servant to succeed him. Along after that I got another letter from a very amiable friend of mine, who sits the second chair to my right, noted ever for his kindness of heart and for the frequent commendations of his friends. He wrote me that if I enjoyed the life of obscurity to which the Bench consigned me, that he was very glad of my appointment. He says, "Of course, you know that there was never anything in your early life that gave any promise of the distinction it seems you are bound to attain." (Laughter.) But I had served with him fifteen years before that on the Supreme Court, a special court of our own, in which we had a dissenting opinion in every case (laughter), and I had learned that Judge L. C. Alexander was capable of friendship and that he was not half as bad as he looks. (Laughter and applause.) He said, "I do not know how you are going to get on, but there is one thing I want to say. I am a Presbyterian and a born dissenter, and it seems to me there is too darn much unanimity on the Supreme Court (laughter), and I would like to see a dissenting opinion now and then, with a view of clarifying the atmosphere." Well, you know it happened that it was not a month until Judge Brown and Judge Williams both got clear wrong and I had an opportunity to dissent. (Laughter.) I have not heard from him since as to the accuracy or correctness of my dissenting opinion, but having heard nothing to the contrary I have been assuming that it met with his entire approbation. While I am on the subject of fellowship and comradeship of lawyers, while not unnecessarily modest I did not feel myself entirely worthy of the compliment I got from a lawyer in San Antonio, whom many of you know, Robert L. Ball, a magnificent man and a fine lawyer. When he lived at Colorado City twenty-five years ago we were associated in some litigation in which we met a most inglorious defeat, in which he gave me all the credit and took two-thirds of the responsibility. He says, "I am having this letter written to you and I want to extend to you my congratulations and felicitations on your appointment. I am expecting a surgeon at three o'clock to examine me to determine whether or not to amputate my leg, which has been seriously injured." I took time to answer all the other letters and telegrams, but I sat down and in my own hand I wrote that man that day. The spirit of friendship which inspired a suffering man to write a generous letter of that kind, I thought deserved immediate recognition. I had another very funny experience in my progress from the Bar to the Bench. My young friend Woodward over there is a friend of mine. We believe alike about a good many things, and I had been in the way of doing him some little service, and we had between us convicted and affirmed several cases. He was county attorney out in Coleman county, and we were rather side partners. (Laughter and applause.) I met him on one of the trains. He had off some of his clothes and I had off some of mine, and I just did recognize him. He congratulated me and says, "I am very glad of your appointment, and father is particularly

glad. He thinks now you are off the Court of Criminal Appeals he can get his Hickey case reversed." (Laughter.) It so happened that after I left the Court of Criminal Appeals the Hickey case was reversed, the case dismissed and Mr. Hickey went on his way rejoicing.

These are some of the experiences of a man traveling from private station into public life. I feel it would be an imposition on your time at this late hour to speak longer, but I want to express my obligations to the profession for the support and the comfort and the criticisms sometimes—and sometimes deserved—that I have received in my brief service on the Bench. At least, I have done some good for my country. I have decreed that we may play baseball on Sunday, and that a club such as this may furnish to its own members such intoxicating liquors as may be convenient. (Applause and laughter.) I thank you. (Applause.)

THE TOASTMASTER.

Gentlemen: John Sharp Williams relates that a number of years ago he came to Texas on a visit, and here he met a great number of his old friends and acquaintances from Mississippi. He inquired of them, one by one, what fate they had suffered in this State, and learned, to his great pleasure, that most of them had succeeded remarkably well, and he finally said to all of them, as they were gathered around him, "Well, boys, I really think that it was not necessary for you to leave. I do not believe you would have been convicted, anyhow." (Laughter.) I really believe that if John Dyer had stayed here he would have escaped. (Laughter.) I don't believe they would ever have caught him.

But, gentlemen, it is really with great pleasure that we welcome to our midst the man whom we know as John L. Dyer, Junior, and I say Junior purposely, because if there ever lived in any community any man who was beloved by all the people, it was John L. Dyer, Senior (applause); the acknowledged greatest lawyer from the justice's court of the State of Texas to the Supreme Court of the United States that ever lived in this community. (Applause.) And we are proud that his son, John L. Dyer, Jr., has achieved a success in his adopted home in the city of El Paso scarcely second to that of his honored father. We loved John L. Dyer Sr., those lawyers of us who knew him, and those people of the community outside the profession who knew him. Likewise the lawyers in Waco and the members of the laity loved them and love now John L. Dyer, Jr. Johnnie, we are glad to see you. We love you. God bless you. (Applause.)

On the toast list, gentlemen, he is referred to as the prodigal son. No man ever returned to any community whence he had gone for whom the people of that community killed the fatted calf with more rejoicing.

"THE RETURN OF THE PRODIGAL SON."

JOHN L. DYER.

Mr. Toastmaster, Gentlemen of the Bar Association, and Friends: I wish to thank Mr. Sanford for the kind words said in memory of my father. I wish to thank you for the royal welcome you have given me tonight, and I am glad that you have killed for me the fatted calf. When I came to Waco I did not come with the idea that I would be

called upon to make a toast. I came here, as most of the others did, to be amused and not to occupy the role of amuser. But I am here, and I am glad to see my friends again. I am glad that you have given us these rich viands and these society drinks, because in El Paso we are only accustomed to tortillas, frijoles and tequila, and we hope on the 22nd of July you won't take that away from us. (Applause.) We need some antidote for alkali and rattlesnake bites. (Laughter.)

Twelve years ago I left here. The convening of the grand jury and my departure were simultaneous (laughter), but I hope the offense is barred by limitation. I did not change my name, because it was not necessary. The inference was that I had done so, and it is bad manners in the West to ask what your name was back home.

I, like Mr. Sanford, hit El Paso on the run, for office. The vigilance committee waited on him in Tennessee, and he came to Waco on the run, for office, and was elected city attorney. He was not satisfied with that honor, but he wanted to go higher, so he stirred something up, and the Bell Water Company was the victim and quo warranto his weapon (laughter), and on this wave of popularity he was ushered into the office of Mayor of Waco, and the Bell Water Company, for a consideration, good, valuable and sufficient, passed over to him its plant, and ever since Waco has been wishing it could get rid of the lemon. (Laughter.) I got in here yesterday morning at four o'clock, after thirty-six hours of long travel. Some alkali had clung to my fair exterior. I told my mother I both wanted and needed a shower. She says, "Johnnie, Mr. Sanford unloaded on Waco that broken down water plant, and they have a sprinkling ordinance, and you can not use the water except from five to eight p. m. (Laughter.) My wife is a Presbyterian. I, by good judgment and indirection, and peace-loving at home, likewise. I told my mother that I did not object for the time being to joining the rank and file of Waco and becoming a Baptist, but they would not receive the sinner. The prodigal was spurned.

Twelve years is a long time, but it is not too long for the selfsame old hacks, the selfsame old images of horseflesh, the selfsame old negroes, to be at the Katy depot, awaiting the northbound Flyer in their accustomed places. Mr. Burges and I, when we alighted, sized up the situation. In our desperation we made a dive for one of those sea-going vessels. (Laughter.) When he got to the State House his head was hanging out, his supper had gone overboard and his breakfast was the last thing he wanted to see. I proceeded on my way out North Fifth street. Suddenly the eastern horizon was dimmed. In my terror I called to Yellow Bob, "What is the matter?" I did not know whether it heralded a storm, rain, or earthquake. He says, "It ain't nothin', Mr. John. We are just passing under the shadow of that twenty-two story building." (Laughter.) And I looked and I sat in awe, and I wondered if somewhere near about a kind State had provided an institution for some one who had lost his balance wheel, and I wondered if you were going to extend your corporate limits and take Mart in and become a city. I proceeded out North

Fifth street. You have made a wonderful progress in those twelve years. I saw the street cars coming, the same street cars with which my earliest recollections are associated (laughter), with the ends flopping up and down and patched and held together. They seemed to be running under a speed ordinance, they moved so slowly.

Fourteen years ago I was admitted to make an assault at practicing law. Here I existed two years. The first year I made the sum of \$300. The next year I earned \$750. I collected \$400 and took I. O. U.'s and promissory promises for the balance, which I keep as treasured relics of a dead and forgotten past. (Laughter.) At this time I married, and bread and meat was becoming a serious problem.

MR. SANFORD (interrupting): God save the queen! (Laughter and applause.)

MR. DYMA (continuing): In my desperation I went to that big, generous man, Bill Seley, and he let me have fifty dollars for ninety days, without personal security, without any hope of repayment. (Laughter.) I left on the tide of your coming prosperity. I was not able to see it. In those days there did not seem to be any law business. Some of you pre-Adamites, who could not get away, remained and prospered. (Laughter.) Dick Munroe took sanctuary on the Bench and secured nearly as many affirmances as reversals. (Applause.) When I left here Shap Ross was a regular attendant at Sunday school. His long association with Scott and Sanford has broken him of this habit. Judge Gallagher at last jarred himself loose from the county court, where he had reigned and ruled from time when the memory of man ran not to the contrary. Ben Kendall resigned the district clerkship, and though a Democrat by birth and by instinct and by raising, formed a partnership with a Republican office holder. (Laughter.) Newt Williams, in a moment of mental aberration, qualified himself for the Texas Legislature, to which punishment he was condemned before he recovered his senses. (Laughter.)

Gentlemen, it has been a long time. Waco was my home. It was my mother, and some day, when the game is over and the last fight has been made, I wish to come back and be out yonder by the side of my father. El Paso has been my foster home, and it has been good to the erring boy. There, are a people, big, generous and kind and yet some of my best and dearest friends are here, some of the happiest recollections of my life are here, and never, I hope, will memory become a lavender-scented romance of things that were. I am glad that I am a prodigal, and I am glad that there is more rejoicing over one sinner that returneth than over the ninety and nine who never sinned and had not need of repentance. (Applause.)

THE TOASTMASTER.

Gentlemen: For the purpose of closing this, to us of Waco, a very delightful occasion, I do not know how it is possible for me to find

language to express myself, except by quoting from some of the grandiloquent expressions of Dr. Johnson. I therefore, say to you, that really if you believe that ever in the history of the Association you will hold your sessions in any town where the people of the city will find more pleasure in your presence than have the people of Waco, then, "Ye who listen with credulity to the whisperings of fancy, or follow with eagerness the phantoms of hope, who suppose that age will perform the promise of youth, or that the deficiencies of today will be supplied by the morrow," of that other day where you go, give ear to the tale of the people of Waco, who have been glad to welcome you and have you in their midst. We bid you a kind adieu.

ROLL OF MEMBERS

WITH RESIDENCE AND

YEAR OF ENROLLMENT

1896—Alexander, W. M., ...	Dallas
1883—Allen, W. H., ...	Dallas
1908—Allen, W. T., ...	Henrietta
1896—Allen, W. P., ...	Austin
1911—Anderson, J. H., ...	Marlin
1907—Anderson, Geo. D., ...	Beaumont
1897—Anderson, W. M., ...	Houston
1910—Anderson, W. A., ...	San Angelo
1900—Andrews, Frank, ...	Houston
1906—Armistead, W. T., ...	Jefferson
1900—Armstrong, W. T., ...	Galveston
1910—Arnold, G. S., ...	Bronte
1904—Ashe, Chas. E., ...	Houston
1911—Atkinson, J. B., ...	Cameron
1910—Atwell, Wm. H., ...	Dallas
1911—Aubrey, Llewellyn ..	Waco
1884—Aubrey, Wm., ...	San Antonio
1891—Autry, Jas. L., ...	Houston
1910—Autry, S. C., ...	San Angelo
1891—Avery, J. M., ...	Dallas
1904—Bailey, Edw. H., ...	Houston
1910—Bailey, W. S., ...	Houston
1911—Baker, E. B., ...	Waco
1882—Baker, Jas. A., ...	Houston
1910—Baker, J. K., ...	Coleman
1902—Baker, Rhodes S., ...	Dallas
1908—Baker, Waller S., ...	Waco
1898—Baldwin, J. C., ...	Houston
1905—Baldwin, B. J., ...	Paris
1884—Ball, Robt. L., ...	San Antonio
1894—Ball, Thos. H., ...	Houston
1906—Ballew, W. W., ...	Corsicana
1907—Barry, H. P., ...	Beaumont
1902—Bartlett, F. W., ...	Dallas

1909—Bartholomew, W. T.,	San Angelo
1909—Barton, A. M.,	Huntsville
1906—Barwise, T. H., Jr.,	Fort Worth
1895—Batts, R. L.,	Austin
1903—Bates, Wharton,	Houston
1910—Baten, Thos. J.,	Beaumont
1905—Batsell, Chas.,	Sherman
1908—Baughn, M. H.,	Mineral Wells
1886—Beall, T. J.,	El Paso.
1902—Beaty, A. L.,	Houston
1904—Beaty, Jno. T.,	Jasper
1897—Bell, A. J.,	San Antonio
1905—Bell, C. K.,	Fort Worth
1910—Bell, Geo. A.,	Mexia
1906—Benfield, J. H.,	Jefferson
1903—Berry, W. C.,	San Antonio
1911—Binkley, Thos. G.,	Temple
1907—Bisland, J. B.,	Orange
1910—Blalock, W. C., Jr.,	San Angelo
1910—Blanks, W. C.,	San Angelo
1910—Blanton, Thos. L.,	Abilene
1905—Bliss, Don A.,	San Antonio
1907—Blount, S. W.,	Nacogdoches
1902—Bookhout, John,	Dallas
1905—Bondies, Harry R.,	Sweetwater
1904—Boone, Gordon,	Navasota
1904—Borden, Henry L.,	Houston
1904—Botts, Thos. H.,	Houston
1911—Bowman, L. L.,	Greenville
1908—Boyle, R. L.,	San Antonio
1903—Bradley, C. S.,	Groesbeck
1905—Bradley, Tom C.,	Fort Worth
1909—Brady, John W.,	Austin
1908—Bratton, R. E.,	Fort Worth
1908—Bromberg, Henri L.,	Dallas
1904—Brooks, M. M.,	Dallas
1905—Brooks, S. J.,	San Antonio
1902—Browder, Edw. M.,	Dallas
1910—Brown, Lindsey M.,	Fort Worth
1882—Brown, T. J.,	Austin
1910—Brown, R. T.,	Henderson
1910—Brown, R. Wilbur,	San Angelo
1896—Bryan, Beauregard,	El Paso
1891—Bryan, Lewis R.,	Houston
1908—Bryan, Morgan,	Fort Worth
1907—Bruce, E. L.,	Orange
1905—Burford, A. L.,	Texarkana

1896—Burgess, R. F.,	El Paso
1910—Burgess, A. R.,	San Angelo
1903—Burgess, Wm. H.,	El Paso
1903—Burney, R. H.,	Kerrville
1896—Burns, W. T.,	Houston
1909—Buckley, W. F.,	Austin
1907—Calhoun, A. L.,	Beaumont
1910—Campbell, Joab,	Eldorado
1902—Campbell, T. M.,	Palentine
1898—Cantey, S. B.,	Fort Worth
1908—Capps, Wm.,	Fort Worth
1895—Carlton, L. A.,	Beaumont
1903—Carter, C. L.,	Houston
1911—Carter, Geo. H.,	Marlin
1894—Carter, H. C.,	San Antonio
1909—Cartledge, E.,	Austin
1905—Carpenter, Lewis T.,	Dallas
1894—Carswell, R. E.,	Decatur
1909—Cave, J. B.,	Austin
1908—Cavin, E. D.,	Galveston
1906—Chambers, C. M.,	San Antonio
1905—Chambers, E. S.,	Clarksville
1908—Chambers, J. M.,	Fort Worth
1898—Childs, J. D.,	San Antonio
1886—Clark, Wm. H.,	Dallas
1896—Clark, Jno. H.,	San Antonio
1911—Cline, H. A.,	Wharton
1906—Clough, G. J.,	Galveston
1894—Cochran, T. B.,	Austin
1911—Cocke, J. Walter,	Waco
1896—Cockrell, Joe E.,	Dallas
1886—Coke, Henry C.,	Dallas
1904—Coldwell, W. M.,	El Paso
1910—Collins, Alex,	San Angelo
1907—Collins, V. A.,	Beaumont
1908—Collins, Walter,	Hillsboro
1907—Colgin, E. B.,	Houston
1910—Connerly, Fred T.,	Austin
1898—Connerly, R. H.,	Austin
1905—Connor, E. S.,	Paris
1907—Conley, Jno. M.,	Beaumont
1907—Cooper, S. B.,	New York
1907—Cooper, S. B., Jr.,	Beaumont
1907—Cope, G. T.,	Fort Worth
1910—Cornwell, James,	Sonora
1909—Cox, John R.,	Austin
1911—Cox, M. G.,	Cameron

1902—Crane, M. M.,	Dallas
1910—Crane, R. C.,	Sweetwater
1902—Crawford, M. L., Jr.,	Dallas
1882—Crawford, W. L.,	Dallas
1907—Crawford, Walter J.,	Beaumont
1893—Crisp, J. C.,	Beeville
1903—Crook, W. M.,	Beaumont
1887—Culbertson, Chas. A.,	Dallas
1903—Cummings, B. Y.,	Hillsboro
1907—Dabney, J. F.,	Liberty
1910—Dabney, Lewis M.,	Dallas
1905—Dabney, S. B.,	Houston
1910—Dalton, C. T.,	San Angelo
1904—Dahmenbaum, H. J.,	Houston
1902—Dashiell, A. H.,	Terrell
1909—Dannelley, J. L.,	Laredo
1907—Davenport, J. R.,	Beaumont
1910—Davidson, C. E.,	Ozona
1882—Davidson, R. V.,	Dallas
1906—Davis, A. L.,	Houston
1911—Davis, John	Dallas
1911—Davis, John W.,	Waco
1903—Davis, M. W.,	San Antonio
1905—Dean, A. R.,	Sherman
1894—Denman, L. G.,	San Antonio
1889—Dibrell, Jos. B.,	Austin
1910—Dibrell, Jos. B., Jr.,	Coleman
1907—Dies, W. W.,	Kountze
1895—Dillard, F. C.,	Chicago, Ill.
1905—Dillard, F. B.,	Tulsa, Okla.
1911—Dilworth, Tom G.,	Waco
1911—Dilworth, T. M.,	Waco
1902—Dinsmore, J. H.,	Sulphur Springs
1910—Dinsmore, John P.,	Greenville
1905—Dohoney, A. P.,	Paris
1909—Doem, D. H.,	Austin
1906—Dorough, R. P.,	Texarkana
1907—Dowlin, P. A.,	Beaumont
1907—Doughterty, S. P.,	Beaumont
1910—Doughterty, J. R.,	Beeville
1910—Dubois, C. E.,	San Angelo
1896—Duff, F. J.,	Beaumont
1901—Duff, R. C.,	Beaumont
1907—Duffy, M. S.,	Beaumont
1910—Dumas, James P.,	San Angelo
1896—Duncan, Jno. M.,	Houston
1897—Duncan, Jno. T.,	La Grange

1898—Dyer, Jno. L.,	El Paso
1903—Eagle, Joe H.,	Houston
1910—Early, W. U.,	Brownwood
1907—Easterling, E. E.,	Beaumont
1902—Eberhart, F. S.,	Mineral Wells
1896—Edwards, Peyton F.,	El Paso
1910—Eidson, A. R.,	Hamilton
1903—Eppstein, L. B.,	New York
1905—Estes, W. L.,	Texarkana
1896—Evans, H. G.,	Bonham
1905—Evans, W. A.,	Bonham
1911—Ewing, E. M.,	Waco
1899—Ewing, Presley K.,	Houston
1904—Feagin, J. C.,	Livingston
1909—Feuille, Frank,	Austin
1906—Figures, W. B.,	Atlanta
1903—Fisher, Lewis,	Galveston
1907—Fleming, J. V.,	Beaumont
1908—Ford, Frank J.,	Decatur
1882—Ford, T. W.,	Houston
1898—Ford, T. C.,	Houston
1911—Foster, W. N.,	Conroe
1893—Foster, Arthur C.,	Rule
1908—Francis, W. H.,	Fort Worth
1908—Frank, D. A.,	Dallas
1884—Franklin, Thos. H.,	San Antonio
1911—Frazier, A. M.,	Hillsboro
1905—Freeman, C. J.,	El Paso
1905—Gafford, Ben F.,	Sherman
1897—Gaines, R. R.,	Austin
1911—Gallagher, J. N.,	Waco
1905—Galloway, C. L.,	El Paso
1911—Gammon, J. Lee,	Waxahachie
1906—Garland, J. E.,	Lamesa
1910—Garrett, H. S.,	Sweetwater
1907—Garrison, J. T.,	Nacogdoches
1911—Garth, D. T.,	Teague
1894—Garwood, H. M.,	Houston
1911—Gary, Hampson,	Tyler
1899—Gill, W. H.,	Houston
1897—Glass, Hiram,	Austin
1907—Glasscock, D. W.,	Beaumont
1903—Goeth, C. A.,	San Antonio
1907—Goodrich, W. F.,	Hemphill
1910—Goodwin, John W.,	Brownwood
1907—Gordon, S. E.,	Beaumont
1906—Gordon, W. D.,	Beaumont

1902—Gossett, M. H., ...	Dallas
1910—Graham, N. W., ...	Ozona
1909—Graves, Ireland, ...	Austin
1907—Graves, G. W., ...	Houston
1907—Gregory, T. W., ...	Austin
1902—Greenwood, C. F., ...	Dallas
1907—Greer, Geo. C., ...	Beaumont
1898—Greer, R. A., ...	Beaumont
1904—Greiner, J. G., ...	Del Rio
1910—Grogan, W. L., ...	Abilene
1911—Gross, Abe, ...	Waco
1882—Gresham, Walter, ...	Galveston
1882—Grimes, S. F., ...	Cuero
1910—Gulon, John I., ...	Ballinger
1905—Haizlip, J. D., ...	Sherman
1905—Hale, Owen P., ...	Paris
1904—Hamblen, E. P., ...	Houston
1904—Hamblen, Otis K., ...	Houston
1910—Hamilton, Edgar S., ...	San Angelo
1908—Hanger, W. A., ...	Fort Worth
1908—Harding, W. L., ...	Waxahachie
1907—Hardy, D. H., ...	Houston
1910—Harlan, Z. I., ...	Marlin
1910—Harp, D. Leon, ...	San Angelo
1911—Harper, A. J., ...	Austin
1908—Harper, Jas. R., ...	El Paso
1910—Harris, C. O., ...	Ballinger
1892—Harris, Edw. F., ...	Galveston
1891—Harris, Jno. Chas., ...	Houston
1904—Harris, R. C., ...	Beaumont
1898—Harris, Theodore, ...	San Antonio
1910—Harrison, G. N., ...	Brownwood
1907—Harrison, Jas. A., ...	Beaumont
1908—Harrison, Robt., ...	Fort Worth
1908—Hart, H. G., ...	Hillsboro
1909—Hart, Jas. H., ...	Austin
1906—Hart, R. D., ...	Texarkana
1909—Hart, W. D., ...	Austin
1882—Harwood, T. F., ...	Gonzales
1905—Hassell, J. W., ...	Sherman
1897—Hawkins, E. A., Jr., ...	Los Angeles, Cal.
1909—Hawkins, Wm. E., ...	Brownsville
1905—Hay, W. L., ...	Sherman
1904—Head, Hayden W., ...	Sherman
1882—Hefley, W. T., ...	Cameron
1907—Hefner, R. A., ...	Beaumont
1906—Henderson, J. M., ...	Daingerfield

1882—Henderson, T. S.,	Cameron
1903—Hicks, Marshall,	San Antonio
1898—Hicks, Yale,	San Antonio
1903—Hildebrand, Ira P.,	Austin
1890—Hill, James E.,	Livingston
1894—Hill, James E., Jr.,	Livingston
1910—Hill, J. P.,	San Angelo
1906—Hill, J. W.,	San Angelo
1903—Hill, Sam'l F.,	Livingston
1902—Holland, W. M.,	Dallas
1902—Holloway, Thos. T.,	Dallas
1910—Holman, Wm. Shields,	Bay City
1905—Holt, Jesse F.,	Sherman
1908—Hord, H. C.,	Sweetwater
1909—Hodges, Wm.,	Texarkana
1911—Hooser, E. H.,	Gatesville
1882—Houston, A. W.,	San Antonio
1882—Houston, Reagan,	San Antonio
1910—Howard, Jno. B.,	Stanton
1907—Howth, C. W.,	Beaumont
1897—Huff, S. P.,	Vernon
1910—Hughes, H. C.,	Sweetwater
1896—Hughes, W. E.,	Denver
1882—Hume, F. Chas.,	Houston
1890—Hume, F. Chas., Jr.,	Houston
1906—Humphrey, T. E.,	Huntsville
1908—Hunt, G. D.,	Dallas
1898—Hunt, W. S.,	Houston
1908—Hunter, Ray,	Fort Worth
1906—Hurley, J. A.,	Texarkana
1911—Hutcheson, J. C., Jr.,	Houston
1911—Hutchings, T. C.,	Mount Pleasant
1911—Humphrey, Leslie,	Henrietta
1903—Ingram, R. P.,	San Antonio
1909—Isaacs, S. J.,	Midland
1910—Jackson, Henry E.,	San Angelo
1911—James, T. R., Jr.,	Fort Worth
1910—Jenkins, C. H.,	Austin
1897—Jester, C. L.,	Corsicana
1908—Johnson, C. W.,	Graham
1909—Johnson, T. S.,	Austin
1907—John, Robt. A.,	Houston
1905—Jones, B. L.,	Sherman
1898—Jones, F. C.,	Houston
1910—Jones, Joseph,	Del Rio
1902—Jones, J. T.,	Greenville
1902—Jones, Wm. M.,	Dallas

1906—Jones, S. P.,	Marshall
1900—Jordan, H. P.,	Waco
1908—Kay, John C.,	Graham
1906—Keeling, W. A.,	Groesbeck
1903—Keller, C. A.,	San Antonio
1909—Keller, Victor,	San Antonio
1896—Kellay, G. G.,	Wharton
1907—Kelly, W. F.,	Galveston
1910—Kemp, Maury,	El Paso
1911—Kendall, B. G.,	Waco
1906—Key, Scott W.,	Haskell
1884—Key, W. M.,	Austin
1910—King, Harry Tom,	Ablene
1905—King, John J.,	Texarkana
1908—King, Rufus W.,	Fort Worth
1906—Kirby, A. H.,	Ablene
1910—Kirk, W. W.,	Sweetwater
1884—Kittrell, Norman G.,	Houston
1904—Kittrell, Norman G., Jr.,	Houston
1882—Kleberg, M. E.,	Galveston
1882—Kleberg, Rudolph,	Austin
1903—Kleiber, John I.,	Brownsville
1894—Knight, R. E. L.,	Dallas
1905—Kone, J. S.,	Denison
1900—Kopperl, M. O.,	Galveston
1908—Kramer, Arthur L.,	Dallas
1904—Kreuger, C. G.,	Bellville
1882—Lane, Jonathan,	Houston
1910—Lanham, Fritz G.,	Weatherford
1908—Lassiter, N. H.,	Fort Worth
1905—Lawrence, J. S.,	Sherman
1906—Leary, D. T.,	Texarkana
1908—Ledgerwood, H. O.,	Fort Worth
1910—Lee, Brown F.,	San Angelo
1894—Lee, Chas. K.,	Fort Worth
1899—Lee, Tom J.,	Galveston
1904—Lenert, Geo. E.,	La Grange
1903—Leonard, H. B.,	San Antonio
1906—Levy, R. B.,	Longview
1911—Lewelleyn, Nat. J.,	Marlin
1895—Lewis, Perry J.,	San Antonio
1902—Lewis, Yancey,	Dallas
1911—Lindsey, S. A.,	Tyler
1895—Lindsley, Philip,	Dallas
1909—Lindsey, N. L.,	Dallas
1897—Lipscomb, A. D.,	Beaumont
1911—Lipscomb, R. T.,	Benham

1906—Lightfoot, J. P.,	Austin
1907—Little, Jno. L.,	Kountze
1902—Lively, H. F.,	Dallas
1908—Locke, Eugene P.,	Dallas
1902—Locke, Maurice E.,	Dallas
1904—Lockett, J. W.,	Houston
1907—Lockett, J. S., Jr.,	Fort Worth
1896—Lockhart, Wm. B.,	Galveston
1908—Lomax, Page T.,	Fort Worth
1907—Long, S. B. M.,	Paris
1907—Lord, C. A.,	Beaumont
1904—Louis, B. F.,	Houston
1902—Love, Thomas B.,	Dallas
1882—Lovejoy, John,	Houston
1907—Lovenberg, I., Jr.,	Galveston
1899—Lovett, R. S.,	New York
1907—Lowry, M. W.,	Beaumont
1909—McCartney, C. L.,	Brownwood
1911—McClellan, J. J.,	Corsicana
1906—McClendon, J. W.,	Austin
1891—McCormick, A. P.,	Dallas
1911—McCullough, T. L.,	Waco
1901—McDonald, D. D.,	Galveston
1907—McDowell, E. A.,	Beaumont
1897—McEachin, J. S.,	Houston
1905—McGrady, J. G.,	Bonham
1905—McInnis, V. E.,	Sherman
1908—McKenzie, J. F.,	Pecos
1908—McKnight, A. H.,	Dallas
1891—McKie, W. J.,	Corsicana
1907—McLaurin, J. F.,	Brookland
1900—McLaurin, Lauch,	Austin
1908—McLean, E. C.,	Sherman
1886—McLean, W. P.,	Fort Worth
1908—McLean, W. P., Jr.,	Fort Worth
1908—McLeod, J. W.,	Fort Worth
1910—McMahan, B. M.,	Greenville
1897—McMahon, J. B.,	Hamblin
1910—McMillan, R. J.,	Kingsville
1885—McNeal, Thos.,	Lockhart
1902—McRae, Chas. C.,	Houston
1907—Mackey, Jno. W.,	Beaumont
1906—Mahaffey, J. Q.,	Texarkana
1904—Malevinsky, M. L.,	New York
1911—Mann, E. M.,	Mart
1882—Mann, Geo. E.,	Galveston
1907—Martin, Carlisle B.,	Houston

1882—Masterson, B. F.,	Galveston
1904—Masterson, A. E.,	Angleton
1904—Masterson, Harris,	Houston
1908—Mathis, Jno. M.,	Brenham
1907—Mathis, L. H.,	Wichita Falls
1905—Mathis, W. J.,	Denison
1908—Matthael, W. O.,	Bellville
1903—Maury, R. G.,	Houston
1882—Maxey, T. S.,	Austin
1911—Maxwell, F. M.,	Waco
1905—Mayfield, Allison,	Austin
1910—Mays, Milton,	San Angelo
1907—Meador, R. T.,	Dallas
1908—Milam, R. F.,	Fort Worth
1908—Michaelson, J. E.,	Lawton, Okla.
1910—Miller, J. A. B.,	Coleman
1897—Miller, Geo. E.,	Fort Worth
1886—Miller, T. S.,	Dallas
1907—Miller, W. E.,	Beaumont
1882—Minor, F. D.,	Beaumont
1910—Montgomery, L. L.,	San Angelo
1889—Montrose, T. D.,	Greenville
1896—Moody, L. B.,	Houston
1902—Moore, L. W.,	La Grange
1907—Moore, B. E.,	Beaumont
1902—Moroney, W. J.,	Dallas
1899—Morrison, W. A.,	Cameron
1911—Morrow, Tarlton,	Hillsboro
1899—Morrow, W. C.,	Hillsboro
1899—Moseley, A. G.,	St. Louis, Mo.
1910—Moseley, H. L.,	Weatherford
1911—Munroe, Richard I.,	Waco
1910—Murray, Joe,	San Antonio
1902—Muse, J. C.,	Dallas
1907—Nall, E. L.,	Beaumont
1907—Nall, W. H.,	Kountze
1906—Napier, W. P.,	San Antonio
1893—Neal, Geo. D.,	Navasota
1882—Neblett, R. S.,	Corsicana
1903—Neethe, Jno.,	Galveston
1910—Neill, Jas. J.,	San Angelo
1903—Neill, Robt. T.,	El Paso
1899—Nelms, Hayne,	Groveton
1891—Newman, F. M.,	Brady
1908—Newsom, Jno. A.,	Buffalo
1895—Nichols, J. F.,	Greenville
1904—Niday, Jas. E.,	Houston

1903—Nolan, Jas. E.,	Fort Worth
1898—Norton, J. R.,	San Antonio
1894—Nunn, D. A., Jr.,	Crockett
1883—O'Brien, Geo. W.,	New York
1911—Odell, W. M.,	Cleburne
1907—O'Fiel, J. J.,	Beaumont
1910—Ogden, Ira C.,	San Antonio
1906—O'Neal, Howard F.,	Atlanta
1898—Onion, J. F.,	San Antonio
1908—Paddock, W. B.,	Fort Worth
1886—Paddleford, S. C.,	Cleburne
1905—Park, A. P.,	Paris
1898—Parker, Edw. B.,	Houston
1896—Parker, John W.,	Houston
1907—Parker, O. S.,	El Paso
1899—Parr, J. K.,	Hillsboro
1911—Parrish, Lucian W.,	Henrietta
1902—Patteson, James,	Cooper
1908—Pearman, C. R.,	Gainesville
1903—Pearson, J. M.,	McKinney
1897—Peareson, D. R.,	Richmond
1909—Pedigo, E. R.,	Austin
1898—Peeler, Jno. L.,	Austin
1904—Pendarvis, G. H.,	Houston
1886—Perkins, E. B.,	Dallas
1906—Perkins, Ed. G.,	Dallas
1907—Perkins, J. I.,	Rusk
1889—Perryman, Sam R.,	Houston
1904—Phelps, Ed S.,	Houston
1902—Phillips, Nelson,	Dallas
1907—Pickett, E. B., Jr.,	Liberty
1904—Pierson, Wm.,	Greenville
1908—Pierson, W. M.,	Dallas
1900—Pleasants, R. A.,	Galveston
1906—Pollard, Claude,	Kingsville
1902—Potter, C. C.,	Gainesville
1909—Potts, C. S.,	Austin
1906—Powell, Ben H.,	Huntsville
1911—Prendergast, A. C.,	Austin
1911—Prendergast, D. M.,	Waco
1908—Prewitt, W. C.,	Fort Worth
1891—Proctor, F. C.,	Beaumont
1882—Rainey, Anson,	Dallas
1910—Ramsey, W. F.,	Austin
1905—Randell, C. B.,	Sherman
1882—Reese, T. S.,	Galveston
1908—Rhome, R. J.,	Fort Worth

1898—Rice, B. H.,	Austin
1910—Rice, Robt. H.,	Winters
1910—Robards, Chas. M.,	Kingsville
1911—Roberts, J. C.,	Dallas
1906—Robertson, Jno. C.,	Dallas
1907—Robertson, H. G.,	Beaumont
1896—Robertson, Jas. M.,	Meridian
1904—Robinson, C. W.,	Houston
1906—Robison, S. I.,	Daingerfield
1906—Rodgers, R. W.,	Texarkana
1908—Ross, Thos. D.,	Fort Worth
1908—Ross, Shapley P.,	Waco
1910—Rowe, S. C.,	Menardville
1904—Rowe, T. C.,	Houston
1908—Rowland, R. M.,	Austin
1909—Rector, J. Bouldin,	Austin
1882—Rector, N. A.,	Austin
1903—Ryan, Jos.,	San Antonio
1910—Sanders, J. M.,	Center
1911—Saner, Jno. C.,	Dallas
1900—Saner, R. E. L.,	Dallas
1908—Sanford, A. D.,	Waco
1908—Sawyer, W. R.,	Fort Worth
1882—Sayers, Jos. D.,	Austin
1910—Sayle, W. E.,	Ballinger
1910—Sayles, John,	Abilene
1910—Scott, S. W.,	Haskell
1908—Scott, W. B.,	Fort Worth
1904—Scott, W. H.,	El Paso
1908—Scott, J. C.,	Fort Worth
1907—Scurlock, Marvin,	Beaumont
1882—Searcy, W. W.,	Brenham
1903—Seelingson, A. W.,	San Antonio
1898—Sehorn, John,	San Antonio
1906—Sexton, R. A.,	Marshall
1911—Sharp, John H.,	Ennis
1909—Shelley, G. E.,	Austin
1882—Sheperd, Seth,	Washington, D. C.
1899—Shepherd, Jas. L.,	Colorado
1905—Shropshire, J. E.,	Brady
1910—Silliman, W. B.,	Eldorado
1882—Simkins, W. S.,	Austin
1900—Simmons, D. E.,	Houston
1908—Simon, U. M.,	Fort Worth
1907—Skinner, S. P.,	Waxahachie
1909—Shurtleff, V. L.,	Hillsboro
1908—Slay, W. H.,	Fort Worth

1911—Sleeper, W. M.,	Waco
1906—Smelser, S. H.,	Texarkana
1910—Smith, E. P.,	Austin
1910—Smith, M. C.,	Ballinger
1910—Smith, Royal G.,	Colorado
1902—Smith, W. J. J.,	Dallas
1905—Smith, Cecil H.,	Sherman
1907—Smith, Stuart R.,	Beaumont
1907—Smithdeal, C. M.,	Hillsboro
1908—Snodgrass, F. L.,	Coleman
1905—Spearman, R. F.,	Greenville
1905—Sonfield, Leon,	Beaumont
1909—Spell, W. E.,	Hillsboro
1904—Speer, Ocie,	Fort Worth
1895—Spence, Jos., Jr.,	San Angelo
1886—Spence, Wendell,	Dallas
1906—Spivey, E. Newt.,	Atlanta
1906—Spivey, Jno. W.,	Marlin
1894—Spoonts, M. A.,	Fort Worth
1905—Spoonts, Marshall,	Fort Worth
1895—Standifer, I. M.,	Houston
1909—Stephens, I. W.,	Fort Worth
1894—Stewart, Maco,	Galveston
1896—Stewart, Jno. S.,	Houston
1906—Stinchcomb, T. B.,	Longview
1911—Stokey, Roland H.,	Dallas
1910—Stone, B. B.,	Ballinger
1911—Stratton, S. E.,	Waco
1911—Street, E. C.,	Waco
1882—Street, R. G.,	Galveston
1897—Streetman, Sam,	Houston
1911—Stribling, O. L.,	Waco
1908—Stuart, Harry L.,	Gainesville
1900—Stubbs, Chas. J.,	Galveston
1882—Stubbs, Jas. B.,	Galveston
1905—Suggs, J. T.,	Denison
1903—Sullivan, J. C.,	San Antonio
1910—Swafford, Whitten,	Anson
1906—Talbot, J. M.,	Dallas
1909—Tallichet, J. H.,	Houston
1882—Taliaferro, Sinclair,	Houston
1882—Tarlton, R. D.,	Austin
1911—Taylor, J. W.,	Waco
1910—Taylor, S. E.,	San Angelo
1907—Taub, Otto,	Houston
1907—Teagle, C. A.,	Houston
1907—Templeton, Howard,	San Antonio

1906—Terrell, J. M., ...	Daingerfield
1911—Terrell, John L., ...	Austin
1882—Terrell, J. O., ...	San Antonio
1882—Terrell, A. W., ...	Austin
1882—Terry, J. W., ...	Galveston
1910—Thomas, J. A., ...	San Angelo
1906—Thomas, W. S., ...	Texarkana
1909—Thomason, R. E., ...	Gainesville
1905—Thompson, Geo., ...	Fort Worth
1902—Thompson, J. W., ...	Dallas
1897—Thompson, Wm., ...	Dallas
1910—Thomson, J. T., ...	San Angelo
1889—Tod, John G., ...	Houston
1882—Todd, Chas. S., ...	Texarkana
1907—Todd, Oliver J., ...	Beaumont
1907—Townes, E. E., ...	Beaumont
1896—Townes, John C., ...	Austin
1908—Townsend, M. W., ...	Dallas
1909—Treaccar, Chas. J., ...	Galveston
1905—Turner, P. A., ...	Texarkana
1898—Turney, W. W., ...	El Paso
1909—Umstead, Chas. H., ...	Texarkana
1905—Upthegrove, Daniel, ...	Dallas
1910—Upton, Lee, ...	San Angelo
1908—Vaughan, R. M., ...	Hillsboro
1908—Von Carlowitz, C., ...	Fort Worth
1909—Von Rosenberg, Fred C., ...	Austin
1905—Vinson, Wm. A., ...	Houston
1910—Wade, J. B., ...	Ballinger
1908—Wade, N. J., ...	Fort Worth
1882—Walker, Jno. C., ...	Galveston
1910—Wallace, Geo. E., ...	El Paso
1906—Wagstaff, J. M., ...	Abilene
1909—Walne, Walter H., ...	Dallas
1907—Walter, C. K., ...	Gonzales
1911—Ward, Pierce B., ...	Cleburne
1903—Ward, R. H., ...	San Antonio
1910—Wardlaw, S. J., ...	Sonora
1896—Wash, F. H., ...	San Antonio
1902—Watkins, A. B., ...	Athens
1895—Watkins, Edgar, ...	Atlanta, Ga.
1911—Watson, John, ...	Cameron
1910—Wayman, Jas. W., ...	Brownwood
1889—Wear, W. C., ...	Hillsboro
1910—Weatherred, W. Marcus, ...	Coleman
1911—Weaver, W. G., ...	Waco
1911—Webb, J. R., ...	Waco

1905—Webb, G. P.,	Sherman
1911—West, Frank T.,	Waco
1910—West, Thos. F.,	Fort Worth
1900—Wharton, C. R.,	Houston
1911—Wharton, Earl,	Houston
1907—Wheat, D. P.,	Beaumont
1906—Wheeler, Jno. T.,	Galveston
1907—Whitaker, H. M.,	Beaumont
1908—Wilcox, F. E.,	McKinney.
1904—Wilkerson, J. D.,	Beaumont
1894—Wilkinson, A. E.,	Austin
1894—Williams, Chas. S.,	Caldwell
1894—Williams, F. A.,	Austin
1907—Williams, Jos.,	Port Arthur
1885—Williams, Wm. D.,	Austin
1911—Williamson, J. D.,	Waco
1911—Willis, J. D.,	Waco
1897—Wilson, Wm. H.,	Houston
1909—Winslow, A.,	Laredo
1906—Wood, Houston,	Dallas
1898—Wood, J. H.,	Sherman
1911—Woods, J. W.,	Houston
1908—Woods, J. H.,	Corsicana
1909—Woodward, D. K., Jr.,	Austin
1910—Woodward, J. O.,	Coleman
1911—Woodward, N. P.,	Temple
1910—Woodward, Walter C.,	Austin
1911—Worsham, Joe A.,	Dallas
1896—Wozencraft, A. P.,	Dallas
1904—Wren, Clark C.,	Houston
1911—Wren, J. G.,	Waco
1909—Wright, W. A.,	San Angelo
1908—Wynne, Ike A.,	Fort Worth
1910—Wynne, T. C.,	San Angelo
1910—Yantis, A. B.,	Sweetwater
1905—Young, J. L.,	Cooper
1897—Young, Jno. L.,	Dallas

HONORARY MEMBERS.

Fitts, Wm. C.,	Mobile, Ala.
Howe, William Wirt,	New Orleans, La.
Littleton, Martin W.,	New York City
Peck, Geo. R.,	Chicago, Ill.
Spencer, Selden P.,	St. Louis, Mo.

NEW MEMBERS ADMITTED TO MEMBERSHIP

JULY 4-5, 1911

Anderson, J. H., ...	Marlin
Atkinson, J. B., ...	Cameron
Aubrey, Llewellyn;	Waco
Binkley, Thos. G., ...	Temple
Bowman, L. L., ...	Greenville
Baker, E. B., ...	Waco
Carter, Geo. H., ...	Marlin
Cline, H. A., ...	Wharton
Cocke, J. Walter, ...	Waco
Cox, M. G., ...	Cameron
Davis, John, ...	Dallas
Davis, John W., ...	Waco
Dilworth, Tom G., ...	Waco
Dilworth, T. M., ...	Waco
Ewing, E. M., ...	Waco
Foster, W. N., ...	Conroe
Frazier, A. M., ...	Hillsboro
Gallagher, J. N., ...	Waco
Gammon, J. Lee, ...	Waxahachie
Garth, D. T., ...	Teague
Gary, Hampson, ...	Tyler
Gross, Abe, ...	Waco
Harper, A. J., ...	Mexia
Hooser, E. H., ...	Gatesville
Hutcheson, J. C., Jr., ...	Houston
Hutchings, T. C., ...	Mt. Pleasant
Humphrey, Leslie, ...	Henrietta
James, T. R., Jr., ...	Fort Worth
Kendall, B. G., ...	Waco
Lewellyn, Nat J., ...	Marlin
Lindsey, S. A., ...	Tyler
Lipscomb, R. T., ...	Bonham
Maxwell, F. M., ...	Waco
Mann, E. M., ...	Mart
McClellan, J. J., ...	Corsicana
McCullough, T. L., ...	Waco
Morrow, Tarlton, ...	Hillsboro
Munroe, Richard I., ...	Waco
Odell, W. M., ...	Cleburne
Parrish, Lucian W., ...	Henrietta
Prendergast, A. C., ...	Waco
Prendergast, D. M., ...	Waco

Roberts, J. C.	Dallas
Saner, Jno. C.	Dallas
Sleeper, W. M.	Waco
Sharp, John H.	Ennis
Stokey, Roland H.	Dallas
Stratton, S. E.	Waco
Street, E. C.	Waco
Stribling, O. L.	Waco
Taylor, J. W.	Waco
Terrell, John L.	Dallas
Ward, Pierce B.	Cleburne
Watson, John	Cameron
West, Frank T.	Waco
Webb, J. R.	Waco
Weaver, W. G.	Waco
Willis, J. D.	Waco
Williamson, J. D.	Waco
Wharton, Earl	Houston
Woodward, N. P.	Temple
Woods, J. W.	Houston
Worsham, Joe A.	Dallas
Wren, J. G.	Waco

DECEASED MEMBERS

Abbott, Jo, Hillsboro	Died Feb. 11, 1908.
Adams, Z. T., Kaufman	Died Jan. 9, 1886.
Anderson, Jas. M., Waco	Died June 3, 1889.
Andrews, A. W., Terrell	Died Feb. 5, 1887.
Archer, Osceola, Austin	Died April, 1898.
Armistead, Geo. J., Texarkana	Died May 1, 1908.
Attlee, E. A., Laredo	Died Jan. 5, 1910.
Austin, Wm. J., Denton	Died Sept. 7, 1888.
Baker, Jas. A., Sr., Houston	Died Feb. 23, 1897.
Ball, F. W., Fort Worth	Died Sept. 9, 1900.
Ballinger, T. J., Galveston	Died Oct. 27, 1889.
Ballinger, W. P., Galveston	Died Jan. 28, 1888.
Banks, W. S., Temple	Died Jan. 19, 1911.
Bassett, B. H., Dallas	Died July 15, 1893.
Bledsoe, D. T., Cleburne	Died August, 1893.
Blake, S. R., Bellville	Died Nov., 1908.
Ballinger, D. C., San Antonio	Died Sept. 1, 1910.
Bonner, M. H., Tyler	Died Nov. 25, 1883.
Botts, W. B., Houston	Died March 7, 1894.
Bradley, L. D., Fairfield	Died Oct. 6, 1886.
Bradshaw, C. J., La Grange	Died June 13, 1888.
Brewer, David J., Washington	Died March 28, 1910.
Brown, R. L., Austin	Died Nov. 9, 1910.
Bryant, J. D., Richmond	Died Aug. 16, 1904.
Burges, W. H., Seguin	Died June 24, 1898.
Burts, J. H., Austin	Died Jan. 15, 1894.
Carrington, W. A., Houston	Died July 14, 1892.
Chesley, A., Beeville	Died July 17, 1907.
Cleveland, C. L., Galveston	Died Feb., 1892.
Cooper, M. S., Conroe	Died March 30, 1899.
Craddock, John T., Greenville	Died March 21, 1911.
Crain, W. H., Cuero	Died Feb. 10, 1896.
Crawford, M. L., Dallas	Died May 15, 1910.
Croom, J. L., Jr., Wharton	Died August 2, 1890.
Davis, Geo. W., ...	Died Sept. 28, 1898.
Davis, L. B., Cleburne	Died August 31, 1910.
Devine, Thos. J., San Antonio	Died March 16, 1890.
Dodd, Thos. W., Laredo	Died Jan. 13, 1907.
Finley, N. W., Dallas	Died Sept. 23, 1910.
Fisher, Sam R., Austin	Died Feb. 12, 1911.

Garrett, C. C., Brenham.....	Died Sept. 15, 1905.
Garrett, N. P., Cameron.....	Died August 3, 1888.
Giles, W. M., Mineola.....	Died May 27, 1901.
Givens, J. S., Corpus Christi.....	Died Jan. 20, 1887.
Goldthwaite, George, Houston	Died April 23, 1897.
Gosling, H. L., Castroville.....	Died Feb. 21, 1885.
Gould, Robert S., Austin.....	Died June 30, 1904.
Granberry, M. C., Austin.....	Died Dec. 16, 1902.
Green, John A., Sr., San Antonio.....	Died July 8, 1899.
Greene, S. P., Fort Worth.....	Died June 30, 1904.
Gresham, Walter, Jr., Galveston.....	Died Jan. 15, 1905.
Guinn, R. H., Rusk.....	Died Jan. 18, 1888.
Haggerty, J. J., Bellville.....	Died April 7, 1893.
Hancock, John, Austin	Died July 19, 1893.
Harris, Jas. L., Dallas.....	Died Feb. 4, 1902.
Harwood, Thos. M., Gonzales.....	Died Jan. 29, 1900.
Henderson, John N., Bryan.....	Died Dec. 21, 1907.
Henry, John L., Dallas.....	Died Oct. 21, 1907.
Herring, M. D., Waco.....	Died Nov. 27, 1897.
Hill, George L., Gainesville.....	Died July 25, 1887.
Hill, R. J., Austin	Died March 30, 1889.
Holmes, H. M., Mason.....	Died Aug. 17, 1895.
Hurt, J. M., Dallas.....	Died April 19, 1903.
Hutchings, R. M., Galveston.....	Died Aug. 22, 1895.
Jackson, A. M., Sr., Austin.....	Died July 11, 1889.
Jackson, A. M., Jr., Austin.....	Died Aug. 17, 1894.
John, A. S., Beaumont.....	Died Feb. 5, 1889.
Johnson, Byron, Galveston.....	Died March 2, 1900.
Jones, C. Anson, Houston.....	Died Jan. 10, 1888.
Kemp, Wyndham, El Paso.....	Died Feb. 9, 1909.
Kennard, John R., Anderson.....	Died Oct. 24, 1884.
Kilgore, S. B., Wills Point.....	Died Dec. 10, 1891.
Kirk, LaFayette, Brenham.....	Died July 29, 1893.
Labatt, Henry J., Galveston.....	Died Sept. 8, 1900.
Lamar, L. Q. C., Dallas.....	Died Dec. 15, 1910.
Languille, P. T., Galveston.....	Died Oct. 14, 1882.
Ledbetter, W. H., La Grange.....	Died April 24, 1896.
Levi, Leo N., New York.....	Died Jan. 13, 1904.
Lightfoot, Henry W., Paris.....	Died Aug., 1901.
Logue, L. J., Columbus.....	Died May 15, 1884.
Lockett, R. R., Texarkana.....	Died Dec. 6, 1906.
Looscan, M., Houston	Died Sept. 7, 1897.

Mann, H. K., Galveston	Died Dec. 14, 1888.
Martin, Thos. P., Beaumont	
Mason, George, Galveston	Died Feb. 3, 1896.
Mason, J. R., San Antonio	Died July 29, 1888.
Masterson, B. T., Jr., Galveston	Died Dec. 13, 1898.
Masterson, J. Harris, Galveston	Died June 27, 1905.
Maxey, S. B., Paris	Died Aug. 16, 1895.
McC Campbell, John S., Corpus Christi	Died Aug. 19, 1907.
McClellan, E. D., Bonham	Died Nov. 28, 1899.
McCoy, John C., Dallas	Died April 30, 1887.
McLemore, M. C., Galveston	Died July 23, 1897.
Miller, Clarence H., Austin	Died Nov. 28, 1908.
Moore, George F., Austin	Died Aug. 30, 1883.
Moore, John M., Edna	Died Sept. 27, 1902.
Morgan, Richard, Dallas	Died Feb. 13, 1907.
Morse, Chas. S., Austin	Died May 13, 1902.
Mott, M. F., Galveston	Died Nov. 18, 1906.
Noble, S. B., Galveston	Died March 20, 1890.
Ochse, J. F., San Antonio	Died Sept. 24, 1888.
Ogden, Chas. W., San Antonio	Died April 19, 1911.
Paschall, George, San Antonio	Died Sept. 7, 1894.
Pearson, P. E., Richmond	Died July 31, 1895.
Peck, L. D., Fairfield	Died May 30, 1885.
Peeler, A. J., Austin	Died Nov. 3, 1886.
Phelps, R. H., La Grange	Died March 24, 1898.
Ponton, T. J., Gonzales	Died Nov. 9, 1889.
Prather, Wm. L., Austin	Died July 24, 1905.
Prendergrast, H. D., Austin	Died Nov. 5, 1886.
Proctor, D. C., Cuero	Died May 8, 1908.
Quinan, George, Wharton	Died Jan. 25, 1893.
Read, N. C., Corsicana	Died Oct. 25, 1884.
Roberts, O. M., Austin	Died May 19, 1898.
Robertson, John W., Austin	Died June 30, 1892.
Robertson, Sawnie, Dallas	Died June 21, 1892.
Robson, W. S., La Grange	Died Oct. 7, 1905.
Ruby, John H., Houston	Died Feb. 16, 1903.
Rucker, W. T., Belton	Died Aug. 10, 1885.
Sayles, John, Abilene	Died May 22, 1897.
Scott, J. Z. H., Galveston	Died Jan. 18, 1904.
Sears, Wm. G., Houston	Died March 19, 1910.
Semple, J. M., Sherman	Died Dec. 9, 1903.

Sexton, Frank B., El Paso-Marshall.....	Died May 15, 1900.
Shelley, N. G., Austin.....	Died Jan. 5, 1898.
Shropshire, E. L., Comanche.....	Died July 4, 1894.
Simkins, E. J., Corsicana.....	Died June 25, 1905.
Simpson, Isaac P., San Antonio.....	Died March 12, 1896.
Smith, Tillman, Fort Worth.....	Died Jan. 26, 1908.
Smith, Thos. H., Hillsboro.....	Died March 15, 1901.
Spencer, F. M., Galveston.....	Died July 14, 1907.
Stayton, John W., Victoria.....	Died July 5, 1894.
Stewart, Clegg, Galveston.....	Died Jan. 15, 1902.
Stewart, Joe H., Austin.....	Died Aug. 14, 1890.
Storey, L. J., Austin.....	Died March 28, 1909.
Swearingen, J. T., Brenham.....	Died Aug. 14, 1890.
Teichmuller, H., La Grange.....	Died Feb. 17, 1901.
Templeton, John D., Fort Worth.....	Died April 24, 1893.
Thurmond, P. C., Bonham.....	Died April 13, 1910.
Timmons, B., La Grange.....	Died June 17, 1884.
Tucker, Chas. Fred, Dallas.....	Died March 16, 1909.
Tucker, Philip C., Galveston.....	Died July 9, 1894.
Waelder, Jacob, San Antonio.....	Died Aug. 28, 1887.
Walker, A. S., Sr., Austin.....	Died Aug. 14, 1896.
Walker, Richard S., Galveston.....	Died May 24, 1892.
Wallace, W. R., Castroville.....	Died Nov. 12, 1884.
Ward, P. H., San Antonio.....	Died Jan. 28, 1899.
Walthall, L. N., San Antonio.....	Died Feb. 22, 1894.
Waul, Thos. N., Neyland.....	Died July 28, 1903.
Webb, Britton R., Fort Worth.....	Died June 28, 1906.
West, Chas. S., Austin.....	Died Oct. 23, 1885.
West, Geo. T., Fort Worth.....	Died Dec. 3, 1908.
West, Robert G., Austin.....	Died April 25, 1904.
Welch, Stanley, Corpus Christi.....	Died Nov. 9, 1906.
Wheeler, Royall T., Galveston.....	Died Oct. 25, 1900.
White, John P., Austin.....	Died Jan. 16, 1905.
Wilkes, F. D., Lampasas.....	Died Nov. 21, 1886.
Williams, Eugene, Waco.....	Died Sept. 21, 1909.
Willie, Asa H., Galveston.....	Died March 16, 1899.
Wilson, J. I., Houston.....	Died Nov. 26, 1906.
Willson, Sam A., Rusk.....	Died Jan. 24, 1891.
Winter, John G., Waco.....	Died July 26, 1908.
Yoakum, Chas. H., Fort Worth.....	Died Jan. 1, 1909.

In Memorium

William Skidmore Banks Temple
DeWitte Clinton Bollinger..... San Antonio
Robert Lenox Brown Austin
John T. Craddock..... Greenville
Lewis Blackburn Davis..... Cleburne
Sam R. Fisher..... Austin
L. Q. C. Lamar..... Dallas
Chas. W. Ogden..... San Antonio

PRESIDENTS
OF THE
TEXAS BAR ASSOCIATION

Thomas J. Devine, San Antonio.....	1882
T. N. Waul, Galveston.....	1882-3
J. H. McLeary, San Antonio.....	1883-4
B. H. Bassett, Brenham.....	1884-5
A. J. Peeler, Austin.....	1885-6
T. J. Beall, El Paso.....	1886-7
W. L. Crawford, Dallas.....	1887-8
F. Charles Hume, Galveston.....	1888-9
H. W. Lightfoot, Paris.....	1889-90
Norman G. Kittrell, Houston.....	1890-1
Seth Sheperd, Dallas.....	1891-2
John N. Henderson, Bryan.....	1892-3
S. C. Padelford, Cleburne.....	1893-4
Thomas H. Franklin, San Antonio.....	1894-5
William L. Prather, Waco.....	1895-6
William H. Clark, Dallas.....	1896-7
William Aubrey, San Antonio.....	1897-8
Frank C. Dillard, Sherman.....	1898-9
Presley K. Ewing, Houston.....	1899-1900
M. A. Spooner, Fort Worth.....	1900-1
James B. Stubbs, Galveston.....	1901-2
Lewis R. Bryan, Houston.....	1902-3
T. S. Reese, Hempstead.....	1903-4
H. C. Carter, San Antonio.....	1904-5
H. M. Garwood, Houston.....	1905-6
A. L. Beaty, Sherman.....	1906-7
A. E. Wilkinson, Austin.....	1907-8
Yancey Lewis, Dallas.....	1908-9
Wm. H. Burges, El Paso.....	1909-10
Hiram Glass, Texarkana.....	1910-11
R. E. L. Saner, Dallas.....	1911-12

ANNUAL ADDRESSES

- 1883—Mr. Richard S. Walker, of Austin:
"The Bench and Bar in the Early Days of Texas."
- 1884—Mr. B. H. Bassett, of Brenham:
"The Lawyer as a Citizen."
- 1886—Mr. Sawnie Robertson, of Dallas:
"The Death of Chancery."
- 1887—Mr. C. C. Garrett, of Brenham:
"Conflict Between State and Federal Courts as to Jurisdiction of the Former over Non-Residents."
- 1888—Mr. F. Charles Hume, of Galveston:
"Execution Process; Should the Legislature Extend It?"
- 1889—Mr. S. B. Maxey, of Paris:
"The Federal Constitution."
- 1893—Mr. Thomas H. Franklin, of San Antonio:
"Judicial Centralization."
- 1894—Mr. B. D. Tarleton, of Fort Worth:
"Some Reflections on the Relations of Capital and Labor."
- 1895—Mr. O. M. Roberts, of Austin:
"The Right and Duty of Coinage by the United States."
- 1896—Mr. Seymour D. Thompson, of Missouri:
"Government by Lawyers."
- 1897—Mr. N. W. Finley, of Dallas:
"Trusts, Combinations and Conspiracies in Restraint of Trade."
- 1898—Mr. Sam J. Hunter, of Fort Worth:
"Life Tenures of Office in a Republican Government."
- 1899—Mr. F. Charles Hume, of Galveston:
"The Supreme Court of the United States."
- 1900—Mr. William Wirt Howe, of New Orleans:
"Roman and Civil Law in the Three Americas."
- 1904—Mr. Robert G. Street, of Galveston:
"Sovereignty."
- 1905—Mr. T. J. Brown, of Austin:
"Our State Judiciary."
- 1906—Justice David J. Brewer, of Washington:
"Two Periods in the History of the Supreme Court."
- 1907—Mr. Yancey Lewis, of Dallas:
"Institutional Changes."
- 1908—Mr. M. L. Crawford, of Dallas:
"The Supreme Court of Texas."

1909—Mr. W. C. Fitts, of Mobile, Alabama:

“Enforcement of Law and an Independent Judiciary.”

1910—Mr. Geo. R. Peck, of Chicago, Illinois:

“The Growth of Institutional Government.”

1911—Mr. Martin W. Littleton, of New York City:

“Structural and Economic Changes.”

PAPERS READ

- 1883—Mr. A. J. Peeler, of Austin:
"Rights of Land Owners in Texas to Protection Against Governmental and Individual Aggression in the Use and Enjoyment of Their Property."
- 1883—Mr. Robert G. Street, of Galveston:
"Texas Pleadings."
- 1884—Mr. O. M. Roberts, of Austin:
"Legal Education and Admission to the Bar."
- 1889—Mr. O. M. Roberts, of Austin:
"Law and Pleading."
- 1890—Mr. B. H. Bassett, of Dallas:
"The Model Brief."
- 1891—Mr. J. M. Avery, of Dallas:
"Liability of an Organizer of a Corporation for Its Acts."
- 1892—Mr. C. C. Garrett, of Brenham:
"Limitations of Actions When There Is a Trustee Authorized to Sue."
- 1892—Mr. S. C. Paddelford, of Cleburne:
"Government."
- 1893—Mr. H. Teichmueller, of LaGrange:
"The Homestead Law."
- 1893—Mr. T. S. Reese, of Hempstead:
"Criminal Law."
- 1893—Mr. John G. Winter, of Waco:
"Community Law."
- 1893—Mr. Richard Morgan, of Dallas:
"Receiverships."
- 1893—Mr. James G. Scott, of Fort Worth:
"Private Corporations."
- 1894—Mr. E. B. Perkins, of Greenville:
"The Statutory Craze."
- 1894—Mr. Robert G. Street, of Galveston:
"Medical Jurisprudence."
- 1894—Mr. Edwin Hobby, of Houston:
"The Legal Profession; Its Value, Importance and Influence."
- 1894—Mr. Charles S. Todd, of Texarkana:
"Assignments for the Benefit of Creditors."
- 1894—Mr. Norman G. Kittrell, of Houston:
"The Criminal Law of Texas and Its Administration."
- 1894—Mr. T. H. Connor, of Eastland:
"Juries and Jury Trials."

- 1894—Mr. T. F. Harwood, of Gonzales:
 "The Respect Due by Members of the Bar to the Judiciary."
- 1895—Mr. George W. Davis, of Dallas:
 "Texas Pleadings."
- 1895—Mr. Wm. H. Clark, of Dallas:
 "Deeds of Trust Preferring Creditors."
- 1895—Mr. John G. Tod, of Houston:
 "Administration of Community Property by the Survivor."
- 1895—Mr. R. L. Batts, of the University of Texas:
 "Some Reflections Concerning Legal Education."
- 1896—Mr. E. J. Simkins, of Dallas:
 "Proper Subjects of Legislation."
- 1896—Mr. F. W. Ball, of Fort Worth:
 "A Desultory Denunciation of Texas Law and Procedure."
- 1896—Mr. H. Teichmueller, of LaGrange:
 "Judge and Jury."
- 1896—Mr. A. E. Wilkinson, of Denison:
 "A Review of Some Recent Noteworthy Decisions by the Higher Courts of Texas."
- 1896—Mr. John Dowell, of Austin:
 "The Symbolism of Commerce—Trade Mark."
- 1897—Mr. Leroy G. Denman, of San Antonio:
 "Our Present Judicial System; Its Advantages and Defects."
- 1897—Mr. Joseph Spence, Jr., of San Angelo:
 "A Review of Recent Noteworthy Decisions of the Higher Courts of Texas."
- 1897—Mr. M. A. Spoonts, of Fort Worth:
 "A Divided Allegiance."
- 1897—Mr. Presley K. Ewing, of Houston:
 "The De Facto Wife."
- 1897—Mr. Wm. Aubrey, of San Antonio:
 "Mob Law."
- 1897—Mr. B. R. Webb, of Fort Worth:
 "Some Needed Reforms in Our Real Estate Laws."
- 1898—Mr. Norman G. Kittrell, of Houston:
 "Needed Reforms in the Assessment and Collection of Taxes."
- 1898—Mr. George E. Miller, of Wichita Falls:
 "Some Features of the Uniform Bankruptcy Law."
- 1898—Mr. Jonathan Lane, of LaGrange:
 "Our Courts."
- 1898—Mr. W. A. Kincaid, of Galveston:
 "In the Known Certainty of the Law Is the Safety of All."
- 1898—Mr. B. R. Webb, of Fort Worth:
 "A Review of Recent Noteworthy Decisions of the Higher Courts of Texas."

- 1899—Mr. T. S. Reese, of Galveston:
 "A Plea for Exactness and Certainty of the Law."
- 1899—Mr. Edward F. Harris, of Galveston:
 "Some Recent Noteworthy Decisions in Civil Cases by the
 Higher Courts of Texas."
- 1899—Mr. W. C. Wear, of Hillsboro:
 "Admission to the Bar."
- 1899—Mr. Philip Lindsay:
 "Humorous Report of Annual Meeting of the Tennessee
 State Bar Association."
- 1900—Mr. J. B. Dibrell, of Seguin:
 "The Legislative Function."
- 1900—Mr. J. A. Holland, of Orange:
 "The White Man's Burden, from a Legal Standpoint."
- 1900—Mr. A. E. Wilkinson, of Austin:
 "Law and Literature."
- 1900—Mr. Edwin B. Parker, of Houston:
 "Anti-Railroad Personal Injury Litigation in Texas."
- 1901—Mr. John G. Tod, of Houston:
 "Recent Noteworthy Decisions of the Texas Courts."
- 1901—Mr. Norman G. Kittrell, of Houston:
 "The Barker Case."
- 1902—Mr. Maco Stewart, of Galveston:
 "The Story of a Land Title."
- 1902—Mr. John Charles Harris, of Houston:
 "Trial by Jury in Civil Causes."
- 1902—Mr. Yancey Lewis, of the University of Texas:
 "The Rights of Riparian Owners in the Matter of Irriga-
 tion."
- 1903—Mr. Jno. N. Henderson, of Bryan:
 "The Pardoning Power, Its Uses and Abuses."
- 1903—Mr. Jno. C. Townes, of Austin:
 "Courses of Study in Law Pursued in the State University."
- 1903—Mr. Jno. C. Walker, of Galveston:
 "Some Peculiarities of the Admiralty Law."
- 1903—Mr. Wm. D. Williams, of Fort Worth:
 "The Taxation of Intangibles."
- 1903—Mr. C. F. Greenwood, of Hillsboro:
 "Will Injunction Lie to Restrain the Local Option Law
 from Going Into Effect?"
- 1903—Mr. S. J. Brooks, of San Antonio:
 "The Increase of Litigation in Cities and Some Suggested
 Amendments to the Practice Act."
- 1904—Mr. Chas. K. Bell, of Fort Worth:
 "Certain Needed Reforms."
- 1904—Mr. Edward F. Harris, of Galveston:
 "Review of Recent Noteworthy Decisions."

- 1904—Mr. Alfred E. Wilkinson, of Austin:
 "The Legal Mind."
- 1904—Mr. A. L. Beaty, of Sherman:
 "Impeaching the Verdict of the Jury."
- 1904—Mr. Jno. C. Walker, of Galveston:
 "The Harter Act."
- 1904—Mr. W. M. Caldwell, of El Paso:
 "Growth of Central Power in the United States."
- 1904—Mr. Clarence H. Miller, of Austin:
 "Our Lawmakers, the Judges."
- 1904—Mr. Ocie Speer, of Bowie:
 "The 'Texas Rule' in Irrigation."
- 1904—Mr. Thomas Shearon, of Dallas:
 "The Vendor's Lien in Texas; An Historical Essay."
- 1904—Mr. Lewis Fisher, of Galveston:
 "Needed Amendments of Probate Law."
- 1905—Mr. W. J. Moroney, of Dallas:
 "How to Reform Our Civil Procedure."
- 1905—Mr. M. H. Gossett, of Dallas:
 "Alien and Corporate Ownership of Land in Texas."
- 1905—Mr. B. R. Webb, of Fort Worth:
 "C. O. D. Sales of Intoxicating Liquors."
- 1905—Mr. Wm. H. Burges, of El Paso:
 "A Comparative Study of the Constitution of the United States of Mexico and the United States of America."
- 1905—Mr. Nelson Phillips, of Dallas:
 "A Great English Lawyer."
- 1905—Mr. B. D. Tarlton, of Austin:
 "The Texas Homestead Exemption."
- 1905—Mr. Jno. N. Henderson, of Bryan:
 "The Old Court of Criminal Appeals and Its Work."
- 1906—Mr. U. M. Rose, of Little Rock:
 "The Code Napoleon."
- 1906—Mr. R. G. Street, of Galveston:
 "Evolution of Law."
- 1906—Mr. Jordan F. Sellers, of Morrilton, Ark.:
 "Trade Monopolies and Their Legal Restraint."
- 1906—Mr. Selden P. Spencer, of St. Louis:
 "Lawlessness and Lawyers."
- 1906—Mr. Lewis Rhoton, of Little Rock, Ark.:
 "The Law of Bribery."
- 1906—Mr. T. W. Gregory, of Austin:
 "The Origin and Growth of the Ku Klux Klan."
- 1906—Mr. Sam B. Dabney, of Houston:
 "A Criticism of the Organization of Our Courts and a Theory for Their Reorganization."

- 1906—Mr. Wm. B. Smith, of Little Rock, Ark.:
 "Bills of Lading as Collateral Security."
- 1907—Mr. Edgar Watkins, of Houston:
 "Should the Legal Status of the Negro Be Changed?"
- 1907—Mr. W. M. Holland, of Dallas:
 "Liability of Trusts for Private Wrongs."
- 1907—Mr. John Chas. Harris, of Houston:
 "Legal Ethics."
- 1907—Mr. Robert A. John, of Beaumont:
 "Uniform Legislation."
- 1907—Mr. Thomas H. Franklin, of San Antonio:
 "The Honor of the Bar."
- 1908—Mr. Jno. T. Duncan, of LaGrange:
 "Is the Statute Constitutional Which Authorizes Notaries
 Public to Fine and Imprison Witnesses Who Refuse to
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- 1908—Mr. J. C. Crisp, of Beeville:
 "Needed Regulation of the Abstract of Title Business."
- 1908—Mr. John G. Winter, of Waco:
 "Examination of Witnesses."
- 1908—Mr. Hiram Glass, of Texarkana:
 "Railroads—National vs. State Control."
- 1908—Mr. A. E. Wilkinson, of Austin:
 "Enforcing Competition by Law."
- 1909—Mr. R. L. Batts, of Austin:
 "The Inefficiency of the Administration of the Law."
- 1909—Mr. R. B. Levy, of Texarkana:
 "Criminal Laws of an Early Period."
- 1909—Mr. S. P. Jones, of Marshall:
 "Unreasonable Delays in the Final Disposition of Civil
 Suits."
- 1910—Mr. Allan D. Sanford, of Waco:
 "The Lawyer in History."
- 1910—Mr. Lewis M. Dabney, of Dallas:
 "Pleading and Practice in the Land of Canaan."
- 1910—Mr. Chas. H. Ogden, of San Antonio:
 "The Honorarium."
- 1911—Mr. Wm. Hodges, of Texarkana:
 "Judicial Reform in Texas."
- 1911—Mr. Ben G. Kendall, of Waco:
 "A Sketch of John Marshall."
- 1911—Mr. H. N. Atkinson, of Houston:
 "Some Results of Holding the Legal Intellect in Mort-
 main."

TEXAS BAR ASSOCIATION

CONSTITUTION.

ARTICLE I.

NAME AND OBJECT OF THE ASSOCIATION.

SECTION 1. This Association shall be called the ~~TEXAS BAR ASSOCIATION~~.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage intercourse among its members.

ARTICLE II.

MEMBERSHIP.

SECTION 1. Any attorney of the Texas Bar, or any clerk or deputy clerk of an appellate court of the State of Texas, in honorable standing, upon his written application, may be entitled to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5.00 shall accompany the same, \$2.50 initiation fee and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association, and if said report be favorable a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected.

ARTICLE III.

OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers, and the President and Vice-President shall be *ex officio* members of the board.

SEC. 3. The officers and Directors shall hold their offices for one year and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolution of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

ARTICLE IV.

COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members and Remedial Procedure; on Legal Education and Admission to the Bar; on Criminal Law and Criminal Procedure; on Commercial Law; on Publication; on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

ARTICLE V.

GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessment to be levied on the members for the support of the Association and the promotion of its objects.

ARTICLE VI.

QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

APPENDIX.**ARTICLE VII.****ANNUAL ADDRESS.**

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

ARTICLE VIII.**MEETINGS.**

SECTION 1. The time and place for holding the annual meeting shall be determined by the Board of Directors and announcement thereof made to the Association sixty (60) days in advance of the date of such meeting.

ARTICLE IX.**AMENDMENTS.**

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of the members present.

ARTICLE X.**DUES.**

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

BY-LAWS.

ARTICLE I.**PRESIDING OFFICERS.**

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President *pro tem* shall be chosen by and from the attending members.

ARTICLE II.

ADDRESS AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

ARTICLE III.

ANNUAL MEETING AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meeting shall be as follows:

1. Opening address of the President.
2. Nominations and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline:
7. Reports of special committees.
8. Nomination of officers.
9. Miscellaneous business.
10. Election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except otherwise provided by the Constitution and By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other addresses made or paper read or presented shall be printed except by order of the Committee on Publication.

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Sec-

retary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.

SEC. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read; and other matters of special interest, and shall also cause such notice to be published.

ARTICLE IV.

MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be \$5.00, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting, in advance, and should any member neglect to pay them for one year at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

ARTICLE V.

OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hours as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committees present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such

times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

SEC. 6a. It shall be the duty of the President to use every possible means to ascertain the death of any member of the Association, and, when such death is ascertained, it shall be his duty to seek for a personal friend of the deceased who would be a proper committeeman and to add such friend to the Committee on Deceased Members.

It shall further be the duty of the President to draft bills upon all measures which are unanimously recommended by the Association, and to present such bills to the Legislature for enactment into laws; and the President, in his Annual Address, shall report to the Association how he has fulfilled this obligation.

ARTICLE VI.

STANDING COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation and experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means of promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the Bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against any member of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; of all of which the complainant shall be notified by the committee.

APPENDIX.

ARTICLE VII.

RESOLUTIONS.

SECTION 1. No resolutions complimentary to any officer or member, for any service performed, paper read or address delivered, shall be considered by this Association.

ARTICLE VIII.

AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association by a vote of two-thirds of those present; provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

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